

E-filing

530

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name HOLDER KEITH
 (Last) (First) (Initial)

Prison Number E87291

Institutional Address P.O. BOX 689 – FW233

SOLEDAD, CA 93960

=====

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

KEITH HOLDER)

(Enter the full name of plaintiff in this action.))

vs.)

Case No.)

BEN CURRY, WARDEN)

(Enter the full name of respondent(s) or jailor in this action))

Case No. _____

(To be provided by the Clerk of the Court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

CW

(PR)

=====

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as the loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution in which you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

5 If you are not presently in custody pursuant to the state judgment against which you seek relief
6 but may be subject to such custody in the future (e.g. detainees), you must name the person in whose
7 custody you are now and the Attorney General of the state in which the judgment you seek to attack
8 was entered.

9 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

10 1. What sentence are you challenging in this petition

11 (a) Name and location of court that imposed sentence (for example, Alameda
12 County Superior Court, Oakland):

13
14 Superior Court of Los Angeles

Los Angeles, California

15 (Court)

(Location)

16 (b) Case number, if known SA003399

17 (c) Date and terms of sentence Seven Years To Life

18 (d) Are you now in custody serving this time? (Custody meaning being in jail,
19 on parole or probation, etc.) Yes X No

20 Where?

21 Name of institution: Correctional Training Facility

22 Address: P.O. Box 689, Soledad, CA 93960

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Penal Code Section 209.
27 _____
28 _____

3. Did you have any of the following?

Arraignment: Yes X No

Preliminary Hearing: Yes X No

Motion to Suppress: Yes No

4. How did you plead?

Guilty Not Guilty X Nolo Contendere

Any other plea (specify)

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone Judge alone on transcript

6. Did you testify at your trial? Yes No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing Yes X No

(c) Time of plea Yes No

(d) Trial Yes X No

(e) Sentencing Yes X No

(f) Appeal Yes X No

(g) Other post-conviction proceeding Yes X No

8. Did you appeal your conviction? Yes X No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes No X

Year: Result:

Supreme Court of California Yes No X

Any other court Yes No X

(b) If you appealed, were the grounds the same as those you are raising in this

Petition? Yes _____ No X

Was there an opinion? Yes _____ No X

(c) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No _____

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, application or motions with respect to this conviction in any court, state or federal? Yes _____ No X

[Note; if you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: Superior Court of Los Angeles

II. Type of Proceeding: Habeas corpus

Grounds raised (Be brief but specific):

a. Same as enclosed.

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

II. Name of Court: Calif. Court of Appeals

Type of Proceeding: Habeas Corpus.

Grounds raised (Be brief but specific):

a. Same as enclosed.

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

III. Name of Court: Supreme Court of California.

Type of Proceeding: Petitioner for Review.

Grounds raised (Be brief but specific):

a. Denial of liberty interests under state and federal due process statutes.

b. Some evidence standard.

c. _____

d. _____

Result: _____ Date of Result: _____

IV. Name of Court: N/A

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes _____ No X

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attached extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleaskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: See attached.

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7 Supporting Facts: See attached.

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11 Claim Two: See attached.

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13 Supporting Facts: See attached.

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17 Claim Three: _____

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19 Supporting Facts: _____

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23 If any of these grounds were not previously presented to any other court, state briefly which
24 grounds were not presented and why:

1 List, by name and citation only, any cases that you think are close factually to yours so that
2 they are an example of the error you believe occurred in your case. Do not discuss the holding or
3 reasoning of these cases:

4 _____
5 _____
6 _____

7 Do you have an attorney for this petition? Yes _____ No X

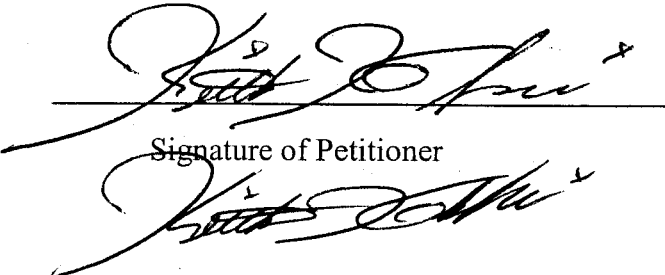
8 If you do, give the name and address of your attorney:

9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled
11 in this proceeding. I verify under the penalty of perjury that the foregoing is true and correct.

12
13 Executed on May 18 2008

14 Date

15 
Signature of Petitioner

INTRODUCTION

Petitioner respectfully petitions this court for a writ of habeas corpus or grant Petitioner an evidentiary hearing to determine if the Supreme Court and/or the Board of Parole Hearings (hereinafter Board) violated Petitioner's right to due process and violated Petitioner's federally protected liberty interest.

The transcript, attached as Exhibit A and other relevant documents hereto will attest to the fact that it is unequivocally clear that the court and the Board did not "consider all relevant, reliable information too the panel/[court]" as directed by the Cal. Code Regulations, Title 15, Division 2, Article 5, § 2280 to § 2292.

Several times, the court cited Cal. Code Regs., tit. 15, § 2402 in its decision, which does not apply to Petitioner's crime. Section 2402 applies to parole consideration criteria and guidelines for murder committed on or after November 8, 1978, and specified attempted first degree murder committed on or after January 1, 1987. Petitioner was ^{NOT} convicted of murder, nor attempted murder. Petitioner was convicted of kidnap for ransom which falls under Cal. Code Regs., tit. 15, § 2282(c), under the Matrix of II which is "Victim Assaulted. Victim was sexually assaulted or otherwise seriously injured or assaulted and D planning. The crime involved intricate prior planning, which carries a suggested sentence of 13, 14, 16 years. Petitioner has been incarcerated for 16 years without assessing any post-conviction credits for time served prior to the hearing. (See section 2290.)

The court found that there was no evidence to support the Boar's finding that the commitment offense demonstrated an exceptionally callous disregard for human suffering. The Board also considered the Petitioner's post-conviction gains, including his participation in several anger management and other self-help, two completed vocations, a multitude of job offerings, as well as his commendable ability to remain free of any serious discipline problems throughout his incarceration. Basically, the Board denied Petitioner parole suitability for the very reason he appeared before the Board, disregarding the guidelines and criteria for determining Petitioner's parole suitability.

Petitioner contends these decisions of the Board and the Superior Court in violation of the due process clause as provided for in the statutes enacted by the legislators in Penal Code § 3041(a) that states, "the Board shall establish criteria for the setting of parole release dates...." The Board

1 established criteria for the setting of parole release dates, but refused to abide by them. Not only did
2 they throw the book at Petitioner, they literally threw the book away and appropriated to itself
3 absolute power over parole matters.

4 At an evidentiary hearing, Petitioner hopes to be able to ascertain where the imaginary line has
5 been drawn that Petitioner must cross in order for the crime to no longer be a "callous disregard for
6 human suffering" or "carried out in a pretty calculated manner." These were the primary reasons the
7 Board used to deny Petitioner parole suitability. (See Exhibit A, p. 72: 8-20.)

8 Petitioner contends this denial of parole suitability and the denial of Petitioner's writ of habeas
9 corpus was arbitrary and capricious, in violation of due process and denying Petitioner of his liberty
10 interest guaranteed by the Eighth and Fourteenth Amendments of the United States Constitution.

11 By verification, it is alleged that:

12 I

13 On October 26, 2006, Petitioner appeared before the Board of Parole hearings. Petitioner was
14 denied parole for one (1) year which Petitioner contends was in violation of his constitutional right of
15 due process of law and not in compliance with the statutes enacted by the legislators to set parole
16 release dates for life term prisoners.

17 II

18 Petitioner contends, he is currently illegally confined at the Correctional Training Facility, a
19 prison attached to the State of California, Department of Corrections and Rehabilitation, in the
20 custody of Ben Curry, Warden, pursuant to a judgment of the Superior Court in and for the COUNTY
21 of Los Angeles, California, Case Number SA003399.

22 III

23 The facts simply stated are, Petitioner was received by the California Department of
24 Corrections on March 1, 1991, for Kidnap for Ransom, Penal Code Section 209(a). Petitioner was
25 sentenced to a term of seven (7) years to life, with a Minimum Eligible Parole Date (MEPD) of
26 05/13/07. (See Exhibit A, p. 1:10-15.)

27 IV

28 Petitioner has been incarcerated for sixteen (16) years. The maximum "suggested base term"

1 for kidnap is seventeen (17) years. (See Cal. Code Regs., tit. 15, § 2282(c).)

2 **V**

3 Petitioner contends, the Board of Parole Hearings:

4 1. Did not consider his suitability for parole in a manner required by Penal Code § 3041,
5 3042, and the Cal. Code Regs., tit. 15, § 2280 to § 2292.

6 2. The Board totally ignored the time already served by Petitioner, which would more than
7 satisfy the time suggested for the crime Petitioner committed. (See the "Matrix for Kidnap for
8 Robbery or Ransom," Cal. Code Regs., tit. 15, § 2282(c).)

9 3. After the court found "that there was no evidence to support the Board's finding that the
10 commitment offense demonstrated an exceptionally callous disregard for human suffering"...and
11 "was not more violent than an ordinary kidnapping ransom." (See Exhibit D, p. 2,) the Matrix for the
12 suggested base term should have been considered.

13 4. The Board's finding that Petitioner's parole release would pose an unreasonable risk of
14 danger to society is not supported by "some evidence," thus the Board's denial of parole suitability
15 and the courts' denial of Petitioner's writ of habeas corpus is in violation of a federally protected
16 liberty interest and Petitioner's rights as expressed in the due process clause of the United States
17 Constitution.

18 **IV**

19 Because the Board and the state courts failed to exercise their discretion appropriately,
20 Petitioner has no plain, speedy or adequate remedy in the ordinary course of the law, but to this court.
21 The issues raised in this petition are of constitutional dimensions, questioning the legality of
22 Petitioner's confinement. Venue is proper as Petitioner is presently incarcerated in this court's
23 jurisdiction.

24 WHEREFORE, Petitioner prays this Honorable Court:

25 (A) Issue a writ of habeas corpus or order to show cause why the writ should not be granted
26 and to inquire into the legality of Petitioner's denial of parole suitability;

27 (B) Conduct an evidentiary hearing to determine if the crime cannot be used as being
28 "especially callous or cruel," what evidence was presented at the hearing that gave cause to deny

1 Petitioner parole suitability;

2 (C) Order any further relief as deemed appropriate and just.

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4 Dated May, 2008

Respectfully submitted,

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7 Keith Holder, Petitioner
8 In pro per
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MEMORANDUM OF POINTS AND AUTHORITIES

1

PETITIONER WAS DENIED DUE PROCESS OF LAW WHERE THE TRIAL COURT ERRED IN DENYING PETITIONER'S WRIT OF HABEAS CORPUS WHEN SUCH DENIAL VIOLATED CLEARLY ESTABLISHED FEDERAL AND STATE LAW AND CONSTITUTED AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE.

"[T]he judicial branch is authorized to review the factual basis of a decision of the Board denying parole in order to ensure that the decision comports with the requirements of due process of law, but...in conducting such a review the court may inquire only whether some evidence in the record before the Board supports the decision to deny parole, based upon the factors specified by statute and regulation. If the decision's consideration of the specified factors is not supported by some evidence in the record and thus is devoid of a factual basis, the court should grant the prisoner's petition for writ of habeas corpus and order the Board to vacate its decision denying parole and thereafter to proceed in accordance with due process of law." (In re Rosenkrantz (2002) 29 Cal.4th 616, 658.)

The Superior Court acknowledged that, "Although the kidnapping was certainly a very serious offense, it was not more aggravated or more violent than the ordinary kidnapping for ransom. Therefore, it did not demonstrate an exceptionally callous disregard for human suffering. See In re Scott (2004) 119 Cal.App.4th 871, 891."

The general standard for a parole unsuitability decision is that "a life prisoner shall be found unsuitable for and denied parole if in the judgment of the [Board or the Governor] the prisoner will pose an unreasonable risk of danger to society if released from prison." (Cal. Code Regs., tit. 15, § 2281(a).)

"Circumstances tending to show unsuitability" are, (1) the prisoner committed the offense in an especially heinous, atrocious, or cruel manner. The factors being considered include: "(a) multiple victims were attacked, injured or killed in the same or separate incidents. (b) The offense was carried out in a dispassionate and calculated manner, such as an execution style murder. (c) The victim was abused, defiled, or mutilated during or after the offense. (d) The offense was carried out in a manner

1 which demonstrates an exceptionally callous disregard for human suffering. (e) The motive for the
2 crime is inexplicable or very trivial in relationship to the offense. (2) Previous record of violence. (3)
3 Unstable social history. (4) Sadistic sexual offense. (5) Psychological factors. (6) Institutional
4 behavior.” In this case, the record does not contain even a modicum of evidence that, due to the
5 especially “heinous” of Petitioner’s commitment offense he currently poses an unreasonable risk to
6 society if released.

7 Keeping utmost at mind, Petitioner was not convicted of murder, it is therefore, his contention
8 that if the record and therefore the court recited as factors sufficient to deny parole [Cal. Code Regs.,
9 tit. 15, § 2283], they were required under controlling legal precedent and guiding regulations to
10 establish a nexus between the facts used and the conclusion reached from those facts. For example,
11 both the Board and the reviewing court(s) concluded that Petitioner’s crime was carried out in a
12 “dispassionate and calculated manner.” Relying on such a circumstance required the Board to point
13 out which of the factors of unsuitability it concluded was sufficient to demonstrate that Petitioner was
14 a present and continuing danger to society. Petitioner asks, as this court should, whether (Id. at
15 (c)(1)(A) and (B) the factor was (A) multiple victims were attacked, injured or killed in the case or in
16 separate incidents, or (B) the offense was an execution style murder; or was an execution style
17 murder; or was it that the case involved (C) the victim was abused, defiled or mutilated during or after
18 the offense?

19 Clearly, as this is not a second or first degree murder, there can be no nexus, or evidence of
20 any nexus between the factors cited by the Board and a reasonable threat to public safety based upon
21 factors, where the factors cited are relevant only to murder offenses under the regulations. As no
22 such legal basis exists under Cal. Code Regs., tit. 15, § 2283 or § 2283(b)(1)(A)-(C), [the controlling
23 regulations for suitability determinations for the crime of kidnapping] to deny parole upon the
24 determination cited. Indeed, the Board is doing nothing more than rendering a conclusory assertion
25 that the crime fact(s) warrant a finding of continuing danger. Petitioner’s liberty interest is in parole
26 and is entitled to more evidentiary protection(s) than the Board’s conclusory assertions. California
27 courts have criticized the lack of a nexus between facts found and conclusion reached in many types
28 of cases. See Walker v. Summer 917 F.2d 382 (9th Cir. 1990); Santa Anna Market Inc. v. Alcohol

1 Bev. Control Bd. 76 Cal.App.4th 570, 574-576 (1999); Yu v. Alcohol Bev. Etc. Appeals Bd. 3
2 Cal.App.4th 286, 297 (1992).

3 Assuming, without conceding, that Petitioner was a danger to the community at the time of his
4 incarceration, "the passage of time itself diminishes the validity of an assumption that [a prisoner's]
5 the dangerousness continues unabated." In re Hofferber 28 Cal.3d 161 177 (1980). With out
6 exception, courts have concluded that the erosion of the predictive value of violence based on long
7 ago past actions has been recognized in numerous parole cases. Particularly when there is no history
8 of violence and good long term institutional behavior. In re Lee 143 Cal.App.4th 1400 (2006); In re
9 Scott 133 Cal.App.4th 573, 595 (2005); In re Elkins 144 Cal.App.4th 475. As one court explained,
10 while a crime may have been 'especially heinous' and exceed the minimum elements
11 of...[kidnapping...as in the instant case]...and therefore compels a finding of such and perhaps a
12 credit to the findings (In re Dannenberg II), too does not mean that the fact that there is a modicum of
13 evidence that the commitment offense was 'especially heinous' will eternally provide adequate
14 support that a decision that a prisoner is unsuitable for parole."

15 In the wake of the California Supreme Court's decision in In re Dannenberg 34 Cal.4th at pp.
16 1079, 1080, courts of appeal have elaborated on the critical distinctions between the finding that a
17 offense was especially heinous and the nexus that links that finding to the conclusion that a prisoner is
18 a 'current danger to public safety,' here, there is simply no evidence...and therefore, no nexus as
19 required by state law 'standard of review.'

20 For the court to state, "the offense was carried out in a dispassionate and calculated manner"
21 Petitioner contends that the court should have included the rest of the regulation it cited to deny parole
22 [Cal. Code Regs., tit. 15, § 2281(c)(1)(A) and (B), or that apply to Petitioner. That regulation states:
23 "(A) Multiple victims were attacked, injured or killed in the same or separate incidents," and "(B) the
24 offense was carried out in a dispassionate and calculated manner, such as in an execution style
25 murder," neither of which occurred in the crime Petitioner was convicted of, making the court's
26 finding of 'some evidence' to support the determination that Petitioner presented an unreasonable risk
27 of danger to society if released void.

28 The Northern District Court of Appeals in Thomas v. Brown 2005 WL378555 (N.D. Cal.)

1 analyzed the commitment offense in the context with all other competing factors favoring parole
2 suitability and determined that Thomas' crime does not provide 'some evidence' to support the
3 Governor's (or Board's) decision that he is currently unsuitable for parole. The salient factor about
4 this case was how the court determined that the Sass and Biggs decisions "are not polar opposites and
5 cannot be harmonized."

6 Other District Court cases have appeared to have followed or applied the Thomas v. Brown,
7 supra, analysis in granting relief are Willis v. Kane, 2007, WL123060 (N.D. Cal. 04-26-2007);
8 Blankenship v. Curry, 3007 WL1113798 (N.D. Cal. 2007); Brown v. Kane 2007, WL1288448 (N.D.
9 Cal. May 2, 2007); Prittle v. Cal. Bd. of Prison Terms, 2007 WL11140817 (E.D. Cal.); McCullough v.
10 Kane 2007 WL1593227 (N.D. Cal. 06-01-07); Flower v. Butler 2007, WL17525684 (E.D. Cal. 06-
11 13-07.)

12 Petitioner also asks this Court to consider the recent state appellate case which has interpreted
13 the 'some evidence' standard and the Dannenberg decision. In In re Lee 143 Cal.App.4th, 1400, 1408,
14 the court stated:

15 "The test is not whether some evidence supports the reason the Governor
16 cites for denying parole, but whether some evidence indicates a parolee's
17 release unreasonably endangers the public safety...
18 "[A] governor, in reviewing a suitability determination, must remain
19 focused not on circumstances that may be aggravating in the abstract, but
20 rather, on the facts indicating that release currently poses 'an unreasonable
21 risk of danger to society.'" (See also In re Elkins, supra, 144 Cal.App.4th
22 at p. 499.)

23 In Elkins, the court concluded that the nature of the commitment offense did not support the
24 Governor's conclusion that Elkins continued to pose an unreasonable risk of danger to society if
25 released. "While relying upon Petitioner's crime as an indicator of his dangerousness may be
26 reasonable for some period of time, in this case, continued reliance on such unchanging circumstances
27 – after nearly two decades of incarceration and half a dozen parole suitability hearings – violates due
28 process because Petitioner's commitment offense has become such an unreliable predictor of his
present and future dangerousness that it does not satisfy the 'some evidence' standards. After nearly
twenty years of rehabilitation, the ability to predict a prisoner's future dangerousness based simply on
the circumstances of his or her is nil." (Elkins, supra, 144 Cal.App.4th at p. 500.)

1 In the instant case, the court and the Board acknowledged the post-conviction gains of
2 Petitioner, "including his participation in several anger management and other self-help programs; his
3 two completed vocations; his multitude of job offers in the United States and Trinidad; as well as his
4 commendable ability to remain free of any serious discipline throughout his incarceration." Nothing
5 in the court order nor the Board's denial of parole suitability establishes any evidence that Petitioner
6 would now pose an unreasonable threat to public safety. It may be "irrelevant that a court might
7 determine that evidence in the record tending to establish suitability for parole far outweighs evidence
8 that demonstrates unsuitability for parole." There has to be some evidence presented at the hearing
9 that the Petitioner's release on parole would pose an unreasonable risk of danger to public safety. The
10 nature of Petitioner's commitment offense does not constitute the modicum of evidence required to
11 support the Board's finding of unsuitability once the Petitioner has surpassed the Matrix for Base
12 Terms established for the crime he committed.

13 The regulations that govern that Board's parole suitability decisions explicitly instruct that an
14 unsuitability decision is a conclusion that "the prisoner will pose an unreasonable risk of danger to
15 society if released from prison." (Cal. Code Regs., tit. 15, § 2281(a).) The Board's decision in this
16 case was that Petitioner posed an unreasonable risk of danger to society due to the facts that "multiple
17 victims were involved in the same incident. It was carried out in a manner which demonstrated a
18 callous disregard for human suffering, particularly related to the maid, Ms. Estelilla." It is this
19 decision that must be reviewed under the some evidence standard after the Court found that "there is
20 no evidence to support the Board's finding that the commitment offense demonstrated an
21 exceptionally callous disregard for human suffering." And the court went on to say, "Therefore, it did
22 not demonstrate callous disregard for human suffering." Quoting In re Scott (2004) 119 Cal.App.4th
23 871, 891.

24 THE BOARD OD PAROLE HEARINGS VIOLATED PETITIONER'S
25 CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW AND
26 DEPRIVED HIM OF A FEDERALLY PROTECTED LIBERTY
INTEREST.

27 The Board's assertion that Petitioner is a danger to society is without evidentiary
28 support. There is absolutely no evidence that points to anything showing Petitioner would now pose a

1 danger to society if released from prison.

2 Recently the United States Court of Appeals for the Ninth Circuit discussed and reiterated just
3 such principals as is relevant and evident in the instant case. In the case of Hayward v. Marshall 572
4 F.3d _____, 2008 WL 43716, 2008 US.App Lexis 40. In that case several distinctively relevant
5 factors were discussed which rest at the heart of the due process violation. Petitioner contends is
6 applicable to the instant case. For example, Hayward has been disciplinary free since 1989 and not
7 only received a single minor rule infraction in 1997. Petitioner has been free of even minor
8 infractions his entire incarceration.

9 Hayward was convicted of second-degree murder in 1980 and had/has served 28 years in
10 prison. Petitioner was convicted in 1990 for kidnapping for robbery or ransom and received seven
11 years to life.

12 Hayward had completed several trade and acquired computer and typing skills in prison.
13 Petitioner similarly has completed vocational training and other significant post-conviction gains,
14 including several anger management and various self-help programs.

15 Hayward initially denied involvement in the crime for which he was imprisoned. It was not
16 until 1993 that Hayward took responsibility for his crime. Petitioner has taken responsibility for the
17 crime since trial.

18 Hayward's psychological report portrays an inmate who is remorseful as well as responsible.
19 Petitioner's psychological evaluation by Dr. Marek presents the same. Indeed, Dr. Marek opines:

20 "Holder took full responsibility for his role in the kidnapping. He
21 exhibited remorse and has – and has good insight into the harm that was
caused. His remorse for his crime appears genuine and appropriate."

22 Unlike Hayward, Petitioner had no pre-offense criminality or gang related activities.
23 Petitioner has never been involved in drugs or alcohol in any but social ways.

24 Hayward was statutorily able to parole in 1995 as second-degree murder has a statutory
25 minimum of 15 years. Petitioner, having received 7 years to life, was statutorily eligible for parole in
26 1997. Petitioner has now served 11 years beyond his statutory minimum and at the time of the
27 challenged hearing was only a few short months shy of serving the statutorily suggested maximum
28 under the matrices of seventeen years.

Heretofore, Petitioner has outlined the factors relative to parole suitability and unsuitability under Cal. Code Regs., tit. 15, § 2402 and 2281. Even though these factors are helpful in analyzing whether a prisoner should be granted parole, California courts have made clear that the findings that are necessary to deem a prisoner unsuitable for parole. Irons v. Carey 505 F.3d at 851, 2007 WL 2927359, at *3, are not that a particular factor or factors indicating unsuitability exists, but that a prisoner's release will unreasonably endanger public safety. In re Dannenberg 156 Cal.App.4th 1387, 2007 WL 3408290, at *9 (Cal.App 2007) modified 2007 Cal.App Lexis 1985, 2007 WL 4227229 (Cal.App De. 3, 2007); In re Lee 143 Cal.App.4th 1400, 1408, 49 Cal.Rptr.3d 931 (Cal.Ct.App 2006); In re Scott 133, Cal.App.4th 573, 595, 34 Cal.Rptr.3d 905 (Cal.Ct.App 2005). For this court's purposes then, [T]he test is not whether some evidence supports the Governor's (or Board's) reasons for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. Some evidence of a particular factor does not necessarily equate to some evidence the parolee's release unreasonably endangers public safety. Lee, supra.

The Hayward court had previously reiterated in Irons, supra, that "in some cases indefinite detention based solely on an inmate's commitment offense, regardless of the extent of his rehabilitation will at some point violate due process." Surely, Petitioner's case [not involving even the attempt to murder] is what the Irons court envisioned in the "in some cases" analysis.

In every case, as the Hayward court noted:

"In which we have held that a parole board's decision to deem a prisoner unsuitable for parole solely on the basis of his commitment offense comports with due process, the decision as made before the inmate had served the minimum number of years required by his sentence... Therefore, we conclude [*30] that "[a] we hold in those cases and all we hold today... is that, given the particular circumstances of the offense in these cases, due process was not violated when these prisoners were deemed unsuitable for parole prior to the expiration of their minimum terms."

Hayward, and Petitioner, by contrast had served more than the minimum [15 year term in Hayward and 7 year term in the instant case] term of imprisonment.

Not only has Petitioner's due process liberty interest been violated in the denial of parole it has been violated in utter lack of some evidence sufficient to provide the nexus between the facts and the conclusion reached. For instance, the Board found Petitioner was a current danger to public safety

1 because his crime was carried out in a manner which demonstrated an exceptionally callous disregard
2 for human suffering.

3 While the trial court did not grant the petition for writ of habeas corpus then before it, that
4 court did find that there was no evidence to support the finding. This finding expressly validated
5 Petitioner's claim that the evidence did not possess an indicia of reliability to the conclusion the
6 'facts' was purported to substantiate and, therefore, failed to provide 'some evidence' under the Hill
7 standard of review. Under any 'differential' standard, this finding was sufficient to grant Petitioner's
8 petition as an unreasonable determination of the facts in light of the evidence in this court.

9 In Biggs v. Terhune (9th Cir. 2003) F.3d, the court first held that, "because the California
10 parole scheme [Penal Code § 3041(b)] vests in every inmate a constitutional protracted liberty
11 interest" "protected by the procedural safeguard of the due process clause," "the evidence underlying
12 [every California Parole] Board [parole denial] decision must have an indicia of reliability[.]" and
13 then the Court established parole decision standards for the Board to follow when weighing evidence,
14 holding that:

15 "[while] the [California] parole board's sole supporting reliance on the
16 gravity of [a first degree murder] offense [involving the killing of a
17 witness] and conduct prior to imprisonment to justify denial of parole can
18 initially be justified as fulfilling the requirements set forth by state law,
19 [o]ver time, however, should [a petitioner] continue to demonstrate
exemplary behavior and evidence of rehabilitation, denying him parole
simply because of the nature of [his] offense and prior conduct would raise
serious questions involving his liberty interest in parole."

20 In the case of James Masoner, (01/23/04) Case No. Cv 03-1261-ER, the United States District
21 Court, Central District of California stated:

22 "[3] California Penal Code § 3041(b) does impose an affirmative
23 obligation upon the Board of Prison Terms (BPT), creating a cognizable
Due Process right in the expectation of parole."

24 "[4] Although the gravity of the commitment offense and other pre-
25 conviction factors alone may be sufficient to justify the denial of a parole
26 date at a prisoner's initial hearing, subsequent BPT decisions to deny
parole date must be supported by some post-conviction evidence that the
release of an inmate is against the interest of public safety."

27 The same evidence standard provides protection against more than just fabricated charges or
28 bureaucratic mistakes. The same evidence standard also protects against arbitrary decisions. See

1 Superintendent v. Hill, 472 U.S. at 454-455, 457. Petitioner has been before the Board five (5) times.
 2 (One initial hearing and four subsequent hearings.) (See Exhibit B.) The commitment offense has
 3 been repeatedly relied upon to deny parole. The Board's reliance on the circumstances of the kidnap
 4 to find Petitioner unsuitable for the fifth time and at least 17 years into his 7 years to life sentence that
 5 carried a maximum suggested base term of 17 years. See Cal. Code Regs., tit. 15, § 2282(c)), thus
 6 'the Board's decision was arbitrary and did not comport with the some evidence standard.

7 THE BOARD OF PAROLE HEARINGS DENIED PETITIONER
 8 DUE PROCESS OF LAW BECAUSE PAROLE DENIAL WAS
 9 BASES SOLELY UPON THE CRIME AND PRE-
 INCARCERATION FACTORS WHICH ARE IMMUTABLE.

10 Under Cal. Code Regulations, Title 15 Division 2, the statutory scheme of the Board, the basic
 11 method that is supposed to be used to determine if an inmate is unsuitable for parole remains, "a life
 12 prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner
 13 will [now] pose an unreasonable risk of danger to society if released from prison." (Cal. Code Regs.,
 14 tit. 15, § 2281(a).) Thus, the burden of proof falls squarely on the Board to prove, or present evidence
 15 that Petitioner's release would pose an unreasonable risk of danger or threat to public safety and/or
 16 society. Just saying doesn't make it so.

17 Petitioner contends, the Board presented no evidence what so ever their invocation of the
 18 exception to the rule, Penal Code § 3041(b), and without such proof/evidence, the Board should have
 19 considered the Matrix for Base Terms for Kidnap for Robbery or Ransom. (See Cal. Code Regs., tit.
 20 15, § 2282(c).) If they did not present such evidence having an "indicia of reliability" that Petitioner's
 21 release would pose an unreasonable risk of danger to society, they violated his due process and a
 22 protected liberty interest in being released on parole.

23 In Rosenkrantz, supra, 29 Cal.4th at p. 682, the court found that "the nature of the prisoner's
 24 offense, alone, can constitute a sufficient basis for denying parole." However, Chief Justice George
 25 noted in the next paragraph, "In some circumstances, a denial of parole based upon the nature of the
 26 offense alone might raise to the level if a due process violation – for example where no circumstances
 27 of the offense reasonably could be considered more aggravated or violent than the minimum necessary
 28 to sustain a conviction for the offense....'The Board's authority to make an exception [to the

1 requirement of setting a parole date] based solely on the gravity of a life term inmate's current or post
 2 offense should not operate so as to swallow the rule that parole is 'normally' to be granted.... [A] life
 3 term offense or any other offense underlying an indeterminate sentence must be particularly egregious
 4 to justify the denial of a parole date.'" (Rosenkrantz, supra, 29 Cal.4th at p. 683.)

5 It was also observed in Scott II, supra, 133 Cal.App.4th, that while the "assumption that
 6 prisoner may be deemed unsuitable for release on the basis of the commitment offense 'alone' is
 7 correct, but the proposition must be properly understood. The commitment offense is one of only two
 8 factors indicative of unsuitability [which] a prisoner cannot change...Reliance on such an immutable
 9 factor 'without regard to or consideration of subsequent circumstances' may be unfair, and runs
 10 contrary to the rehabilitative goals espoused by the prison system and could result in a due process
 11 violation."

12 The commitment offense can negate suitability only if the circumstances of the crime reliably
 13 established by evidence in the record rationally indicated that the offender will present an
 14 unreasonable public safety risk if released from prison. The predictive value of the commitment
 15 offense may be very questionable after a long period of time. [Petitioner has been incarcerated for
 16 more than sixteen (16) years.] Thus, denial of release based solely on the basis of the gravity of the
 17 commitment offense warrants especially close scrutiny." (Scott II, supra, 133 Cal.App.4th at pp. 594-
 18 595.) The court elaborated in this concept in Elkins, when they stated, it violates due process to deny
 19 parole "where no circumstance of the offense could reasonably be considered more aggravated or
 20 violent than the minimum necessary to sustain a conviction for the offense." (Elkins, supra, 144
 21 Cal.App.4th at p. 497.) The "overarching" factor determining whether parole should be granted or
 22 denied is whether the criminal poses "an unreasonable risk of danger to society." (Scott II, supra, 133
 23 Cal.App.4th p. 591; Lee, supra, 143 Cal.App.4th at p. 1400; Cal. Code Regs., tit. 15, § 2281(a).)

24 THE BOARD VIOLATED PETITIONER'S DUE PROCESS OF LAW
 25 WHEN THEY DENIED HIM PAROLE SUITABILITY WITHOUT ANY
 26 EVIDENCE SUPPORTING THE STATEMENT THAT PETITIONER'S
 RELEASE WOULD POSE AN UNREASONABLE RISK OF DANGER
 TO SOCIETY.

27 The Board's assertion that Petitioner "would pose an unreasonable risk of danger to society or
 28 a threat to public safety if released from prison at this time," (see Exhibit A, p. 72: 8-13) is not

1 supported by any evidence having an indicia of reliability.

2 In the Mental Health Evaluation for the Board of Parole Hearings, dated August 2006 (Exhibit
3 B) under XIV, Assessment of Dangerousness, Doctor W.E. Marek, Ph.D. stated:

4 "His violence potential is obviously lower than the average inmate, based
5 on his good recent institutional adjustment. If released to the community,
6 his violence potential is estimated to be no higher than the average citizen
7 in the community. It appears his involvement in the instant offense was
8 essentially an aberration for him. There are no obvious or significant
9 violence precursors for him."

10 Penal Code § 5068 requires the Department of Corrections and Rehabilitation (CDCR) to
11 conduct and submit to the Board a psychological evaluation on persons appearing for parole
12 consideration. The Board asks the CDCR experts to specifically address the question of the prisoner's
13 'dangerousness.' The format agreed upon between the Board and CDCR experts to rate the prisoner's
14 'dangerousness' in terms of 'violence potential.' The CDCR's Departmental Operations Manual
15 (DOM) #62090.13, directs the conclusion to be reported by the experts as either "below average,"
16 "average" or "greater than average" violence potential. Once Petitioner has obtained a "blow
17 average" violence potential rating in a psychological evaluation, he has obtained the most favorable
18 rating for release he can obtain. The Board panel members are not qualified professionals and for
19 them to make contrary determinations of his violence potential or dangerousness reported by qualified
20 professionals, trained and hired by the CDCR to make such determinations and assessments, they are
21 violating Petitioner's due process of law.

22 In short, the burden is not on the Petitioner to prove that he is suitable for parole, instead, the
23 parole authorities are only relieved of their obligations to set a release date if there is a legitimate
24 concern that Petitioner would pose a threat of future violence if released. Such a decision must be
25 based on Petitioner's violence potential and threat now, not what it was many, many years ago.

26 The legislature did not go to such lengths in providing such language as; "One year prior to the
27 inmate's minimum eligible parole release date a panel consisting of at least two commissioners of the
28 board of Prison Terms [now the Board of Parole Hearings] shall again meet with the inmate and shall
normally set a parole release date as provided in Section 3041.5," only to have the Board ignore the
laws that give them the authority to function as part of the executive branch. Therefore, the panel

1 member's decision that Petitioner would pose an unreasonable risk of danger to society if released
2 from prison is without foundation and not based on facts or evidence that were presented at the
3 hearing, making their decision arbitrary, capricious and possibly predetermined.

4 Petitioner contends the Board has violated the foundational precept of due process in order to
5 execute an illegal, underground policy of denying parole suitability to most indeterminately sentenced
6 prisoners, and extracting additional punishment from Petitioner beyond the sentencing laws that were
7 in effect at the time of the crime.

8 In California, under existing laws, Petitioner should not forever be banned from parole because
9 of the nature of his offense, an offense that carries a maximum suggested base term of seventeen
10 years. (See Cal. Code Regs., tit. 15, § 2283(c).)

11 THE BOARD'S DECISION DENYING PETITIONER PAROLE IS
12 ARBITRARY AND NOT SUPPORTED BY THE EVIDENCE
PRESENTED AT THE HEARING.

13 The Ninth Circuit Court has held that the California parole scheme creates a cognizable liberty
14 interest in release on parole because Penal Code § 3041 uses mandatory language that is similar to the
15 Nebraska and Montana statutes addressed in Greenholtz and Allen respectively. (McQuillion v.
16 Duncan 306 F.3d at 901-902.) As the Ninth Circuit explained, "Section 3041 of the California Penal
17 Code creates in every inmate a cognizable liberty interest in parole which is protected by the
18 procedural safeguards of the due process clause," and interest arises "upon the incarceration of the
19 inmate." (Biggs v. Terhune, 334 F.3d 910, 914-915 (9th Cir. 2003).)

20 In Biggs at 916, the court also held that the Board's continued use of the crime as a basis for
21 denial of parole violates federal due process, and that the BPT's usage of prior history and unchanging
22 factors as a basis for denial violates federal due process.

23 In In re Ramirez (2001) Cal.App.4th 569, [114 Cal.Rptr.2d 396-397] the court concluded in its
24 instruction to the Board, "[T]he Board must weigh the inmates criminal conduct not against ordinary
25 social norms, but against other instances of the same crime or crimes." The court also acknowledged
26 that the "gravity of the commitment offense or offenses alone may be a sufficient basis for denying a
27 parole application." (Id. at p. 369), but went on to strongly advise:

28 "Therefore, a life term offense or any offense underlying an indeterminate

1 sentence must be particularly egregious to justify the denial of a parole
2 date.”

3 The question of the Board’s obligation to parole offenders is becoming increasingly
4 defined/settled as more and more courts are finding denials of parole to have been rendered in such
5 way as to violate the affected prisoner’s rights. The Board’s decision is governed by a deferential
6 “some evidence” standard designed to ensure minimum procedural due process protections.
7 (Rosenkrantz, supra, 29 Cal.4th at p. 658; Scott I, supra, 29 Cal.4th at 99. 885-887.) Because this
8 requirement gives rise to a liberty interest protected by due process of law, and because due process of
9 law requires that a decision considering such actors be supported by some evidence in the record, the
10 Board’s decision is subject to judicial review (an evidentiary hearing) to ensure compliance with this
11 constitutional mandate. “[T]he ‘some evidence’ standard is extremely deferential and reasonable
12 cannot be compared to the standard of review involved in...considering whether substantial evidence
13 supports the finding.” (Rosenkrantz, supra, 29 Cal.4th at p. 665.) Nevertheless, it requires “some
14 indicia of reliability” (Scott II, supra, 133 Cal.App.4th p. 591, quoting Biggs v. Terhune (9th Cir.
15 2003) 33 F.3d, 910, 915) and “may be understood as meaning that suitability determinations must
16 have some rational basis in fact.” (Scott II at p. 590, Fn. 6.)

17 In this case, the record is replete with documentation of not only Petitioner’s self-help
18 programming during his incarceration, (see Exhibit C), but the psychological evaluation for the
19 hearing (Exhibit B) concluded that Petitioner poses a low degree of threat to the public if released.

20 The Board’s conclusion that Petitioner’s incarceration and efforts of rehabilitation indicates
21 that Petitioner still poses a threat to public safety of released on parole is just not supported by the
22 evidence.

23 As made clear by In re Morrall (2002) 125 Cal.Rptr.2d 391, 407, 102, Cal.App.4th 280; In re
24 Rosenkrantz and In re Ramirez, the evidence must tend to support a finding that Petitioner poses a
25 real threat to public safety if released.

26 Cal. Code Regulations, Division 2, Article 5 was established to meet the mandates of Panel
27 Code § 3041(a) which states: “The board shall establish criteria for the setting of parole release dates
28 and in consider the number of the crime for which the Petitioner was sentenced and other factors in

mitigation or aggravation of the crime.” Neither the Penal Code nor the California Code of Regulations states the Board may deny a prisoner parole suitability on the first, second or third parole suitability hearing because the prisoner has not served enough time. Cal. Code Regs., tit. 15, § 2281(a) states in part: “Regardless of the length of the time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.” By the same token, if at an inmate’s first parole consideration hearing, the Board cannot prove or present evidence that an inmate’s release will pose an unreasonable risk of danger to society, the Board is obligated to set his/her release date, as long as the inmate has served his or her Minimum Eligible Parole Date (MEPD). Petitioner’s MEPD was May 13, 1997.

Without presenting any evidence that Petitioner would pose an unreasonable risk of danger to society, the Board’s denial of parole suitability was arbitrary and not supported by the record.

CONCLUSION

This Court has jurisdiction over the issues raised in this appeal, because the “target” issue is not the state court’s judgment or the sentence derived there from, but is rather the Board’s administrative decision “regarding the execution of his sentence.” (*Rosas V. Noelson* 728 F.3d, 1229, 1232 (9th Cir. 2005).)

Petitioner’s contends the California Supreme Court had held the Penal Code § 3041 parole statute creates a protected “liberty interest” in parole and that “due process” applies at parole hearings. (See *In re Rosenkrantz* (2002) 29 Cal.4th, 616, 655-658.) Federal courts have also come to the same conclusion. (See *McQuillion v. Duncan* 306 F.3d 895, (9th Cir. 2002); *Jancseck v. Oregon Bd. of Parole* 833 F.2d, 1389 (9th Cir. 1987); *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex* 442, U.S. 1, 99 S.Ct. 2100, 60 L.Ed 2d, 668 (1979); *Biggs V. Terhine* 334F.3d 910 (9th Cir. 2003).) This is so because Penal Code § 3041 mandatory language, “the panel or board **shall** normally set a parole date **unless** it determines further incarceration is necessary in the interest of public safety.” Also see *Board of Pardons v. Allen* 482 U.S.369, 107 S.Ct. 24125, 96 L.Ed.2d 303 (1987) [Petitioner has] “a presumption that parole release will be granted, unless the statutory defined determinations are met.”)

1 In the most recent ruling of Rosenkrantz v. John Marshall, ___ F.Supp.2d ___, 2006 WL
2 2327085 (C.D. Cal.) (August 1, 2006), the court stated, "In the circumstances of this case, the BPT's
3 continued reliance upon the unchanging facts of Petitioner's crime to deny parole in 2004 violated due
4 process. First continued reliance upon unchanging facts of Petitioner's crime amount to an arbitrary
5 denial of Petitioner's liberty interest. Petitioner has been denied parole on six occasions prior to the
6 determination he now challenges. Continued reliance upon the unchanging characterization of
7 Petitioner's offense amount to converting Petitioner's sentence of seventeen years to life to a term of
8 life without the possibility of parole."

9 In Brian Sass v. California Board of Prison Terms 2006 DJDAR 11931 No. 05-16455, D.C.
10 No. CV-01-00835-MCE (9th Cir. August 31, 2006) the Honorable Circuit Judge Reinhardt stated in
11 his dissension, "When we assess whether state parole board's suitability determination is supported by
12 'some evidence' in a habeas case, our analysis is framed by state law. The statute and regulations in a
13 particular state dictates what factors the parole board in that state may consider in deciding whether an
14 inmate is suitable for parole. In other words, the state rules and regulations dictate the nature of the
15 findings that are required before a determination can be made that an inmate is unsuitable for parole.
16 Only evidence that would tend to support such finding constitutes "some evidence." Thus, although
17 federal law establishes the 'some evidence' standards, state law tells us of what that evidence may
18 consist, and to what it might pertain. Here, as I have explained, the California statute and regulations
19 provide that an offense must be committed in an exceptionally or particularly egregious manner for an
20 inmate's offense to justify a determination that he is unsuitable for parole. Also, the inmate must
21 constitute a present danger to society at the time of the suitability hearing. Accordingly, as a habeas
22 court, we must look to whether there is 'some evidence' that Sass committed his offense of
23 imprisonment in a manner that distinguishes it from the vast majority of second-degree murders, that
24 shows that Sass's offense was more 'heinous, atrocious, or cruel' than most other such offenses. We
25 must also look to see that there is some evidence that as of the date of Sass's parole denial he was a
26 present danger to society."

27 The California Penal Code, Section 3041(a) requires that a parole date "shall normally" be set.
28 For the Board to normally deny parole suitability because of the conviction offense, without any post-

conviction evidence that Petitioner's release will now pose an unreasonable risk of danger, or threat to society is a violation of due process.

Logic would dictate that, if the Penal Code states, "One year prior to the inmate's minimum eligible parole release date a panel consisting of at least two commissioners of the Board of Prison Terms [now the Board of Parole Hearings] shall meet with the inmate and "shall normally" set a parole release date as provided in Section 3041.5," yet the record reflects that the Board normally denies parole release dates to more than 90% of appearing inmates. This fact alone should be cause to examine the Board's mission and direct to be in compliance with the statute that states, "the Board shall establish criteria for the setting of parole release dates."

If the Board is allowed to use the nature of the off and post-conviction factors to deny Petitioner parole suitability at his consideration hearing one year prior to his MEPD and every subsequent parole consideration hearing thereafter, the rules and regulations, the Penal Code, and all the rulings, from all the courts, state and federal, are null and void. If the Board is allowed to make decisions contrary to the state and federal constitution, Petitioner has no rights whatsoever and the Board has unfettered and absolute power to interject their political views and any other underground policies they choose to deny parole suitability to any and all inmates appearing before them.

The Board presented no reliable evidence to support their finding that Petitioner would pose an unreasonable risk of danger to society and is unsuitable for parole release. As in most hearings, more than 90%, the Board uses the commitment offense as their reason to deny parole suitability. California Code of Regulations, Title 15, Division 2, are the rules and regulations the Board has established to meet the mandates of Penal Code § 3041, yet their disregard of parole consideration criteria and guidelines has permitted the Board to repeatedly refuse to comply with the mandates of the statutes and the rules and regulations is a violation of the Due Process Clause that guarantees prisoners the right to a fair and impartial hearing.

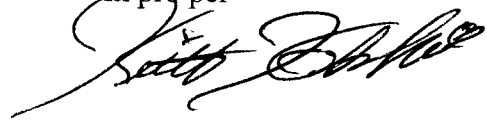
For the reasons stated herein, Petitioner prays that this Honorable Court grant this petition for writ of habeas corpus and provide the guidance needed to ensure Petitioner's Constitutional Rights are protected.

1 Dated: May 18, 2008
2
3

Respectfully Submitted,

4 
Keith Holder, Petitioner

In pro per

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EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

EXHIBIT

"A"

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

**INMATE
COPY**

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number E-87291

KEITH HOLDER)
_____)

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

OCTOBER 26, 2006

2:50 P.M.

PANEL PRESENT:

Ms. Bilenda Harris-Ritter, Presiding Commissioner
Mr. Robert Harmon, Deputy Commissioner

OTHERS PRESENT:

Mr. Keith Holder, Inmate
Mr. William Pitman, Attorney for Inmate
Mr. Patrick Sequeira, Deputy District Attorney
Correctional Officer(s), Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

No
Yes

See Review of Hearing
Transcript Memorandum

Janet Warnock, Northern California Court Reporters

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--oOo--

P R O C E E D I N G S

1

2

DEPUTY COMMISSIONER HARMON: And you're on record.

3

PRESIDING COMMISSIONER HARRIS-RITTER: Thank you.

4

Good afternoon, Mr. Holder.

5

INMATE HOLDER: Good afternoon.

6

PRESIDING COMMISSIONER HARRIS-RITTER: This is a

7

Subsequent Parole Consideration Hearing for Keith Holder,

8

CDC number E-87291. Today's date is October 26th, 2006

9

and the time is 2:50 p.m. We are located at CTF Soledad.

10

The inmate was received on March 1st, 1991 from Los

11

Angeles County. The life term began on March 1st, 1991,

12

and the minimum eligible parole date is May 13th, 1997.

13

The controlling offense for which the inmate has been

14

committed is Kidnap for Ransom, Los Angeles County Case

15

SA003399, Count Two Penal Code Section 209(a). Mr.

16

Holder, this hearing is being tape recorded, and for the

17

purpose of voice identification, we're going to go around

18

the room and each of us will say our name, spell our last

19

name, and when it gets to be your turn, if you could please

20

also give us your CDC number after you spell your last

21

name, we would really appreciate that, okay?

22

INMATE HOLDER: Yes.

23

PRESIDING COMMISSIONER HARRIS-RITTER: All right,

24

I'm Bilenda Harris-Ritter, H-A-R-R-I-S hyphen R-I-T-T-E-R,

25

Commissioner, Board of Parole Hearings.

26

DEPUTY COMMISSIONER HARMON: And Robert Harmon, H-

27

A-R-M-O-N, Deputy Commissioner.

1 DEPUTY DISTRICT ATTORNEY SEQUEIRA: Patrick
2 Sequeira, S-E-Q-U-E-I-R-A, Deputy District Attorney,
3 County of Los Angeles.

4 ATTORNEY PITMAN: William Pitman, P-I-T-M-A-N,
5 attorney for Keith Holder.

6 INMATE HOLDER: Keith Holder, H-O-L-D-E-R, my last
7 name. E-87291 is my CDC number.

8 PRESIDING COMMISSIONER HARRIS-RITTER: Thank you
9 very much. We also have two correctional peace officers
10 in the room for security purposes. Now, Mr. Holder, I'm
11 looking at your file. I note that on October 7th, 2005
12 you signed your BPT 1073 Form, which indicates you have no
13 disabilities related to the ADA. Do you recall that?

14 INMATE HOLDER: Yes, ma'am.

15 PRESIDING COMMISSIONER HARRIS-RITTER: And is that
16 still correct?

17 INMATE HOLDER: Yes.

18 PRESIDING COMMISSIONER HARRIS-RITTER: All right,
19 we just have a few little things we have to deal with
20 related to the ADA. There's a paragraph taped to the
21 desktop in front of you. If you could just read that out
22 loud into the record, that will get us started.

23 INMATE HOLDER: "The American with
24 Disability Act, ADA, is a law to help people
25 with disability. Disability are problems
26 that make it hard for some people to see,
27 hear, breathe, talk, walk, learn, think,

1 walk, work, or take care of themselves than
2 it is for others. Nobody can be kept out of
3 public place or activities because of a
4 disability. If you have a disability, you
5 have the right to ask for help to get ready
6 for your BPT hearing, get to the hearing,
7 talk, read forms and papers, and understand
8 the hearing process. BPT will look at what
9 you ask for to make sure that you have a
10 disability that is covered by the ADA, and
11 that you have asked for the right kind of
12 help. If you do not get help or if you
13 don't think you get -- got the kind of help
14 you need, ask for a BPT 1070 -- 1074
15 Grievance Form. You can also get help to
16 fill it out."

17 **PRESIDING COMMISSIONER HARRIS-RITTER:** Great.

18 Thank you very much. Now let me ask you a few questions
19 that we ask everyone. Do you have any problem walking up
20 or down stairs, or for distances of a hundred yards or
21 more?

22 **INMATE HOLDER:** No.

23 **PRESIDING COMMISSIONER HARRIS-RITTER:** And do you
24 need glasses or a magnifying device to see or read
25 documents.

26 **INMATE HOLDER:** Sometimes. It depends on how
27 small the writing is.

4

1 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, and
2 how are you doing today?

3 INMATE HOLDER: I did okay.

4 PRESIDING COMMISSIONER HARRIS-RITTER: You did
5 great with that. Okay. Do you have any hearing
6 impairments?

7 INMATE HOLDER: No.

8 PRESIDING COMMISSIONER HARRIS-RITTER: All right,
9 have you ever been included in the Triple CMS program?

10 INMATE HOLDER: No.

11 PRESIDING COMMISSIONER HARRIS-RITTER: Have you
12 ever been included in the Enhanced Outpatient Program?

13 INMATE HOLDER: No.

14 PRESIDING COMMISSIONER HARRIS-RITTER: And have
15 you ever taken any psychotropic medication in prison or
16 on the streets?

17 INMATE HOLDER: No.

18 PRESIDING COMMISSIONER HARRIS-RITTER: And do you
19 have any disability that you believe would prevent you
20 from participating in today's hearing?

21 INMATE HOLDER: No.

22 PRESIDING COMMISSIONER HARRIS-RITTER: And
23 Counselor, are there any ADA issues you believe need
24 further discussion?

25 ATTORNEY PITMAN: No.

26 PRESIDING COMMISSIONER HARRIS-RITTER: All right.
27 Then let's go forward. We will reach a decision today,

1 Mr. Holder, and we'll inform you whether or not we find
2 you suitable for parole. We'll tell you the reasons for
3 our decision. If you are found suitable for parole, the
4 length of your confinement will be explained to you.
5 Before we recess the hearing to deliberate on our
6 decision, the District Attorney's Representative, your
7 attorney, and you will be given an opportunity to make a
8 final statement regarding your suitability. We will then
9 recess, clear the room, and Commissioner Harmon and I will
10 deliberate. Once we have completed our deliberations, we
11 will resume the hearing and announce our decision. The
12 California Code of Regulations states that regardless of
13 time served, a life inmate shall be found unsuitable for,
14 and denied parole if, in the judgment of the Panel, the
15 inmate would pose an unreasonable risk or danger to
16 society if released from prison. You have certain rights
17 related to this hearing and that includes a timely notice
18 of the hearing, the right to review your Central File, and
19 the right to present -- present relevant documents.
20 Counselor, have your client's rights been met?

21 **ATTORNEY PITMAN:** Yes.

22 **PRESIDING COMMISSIONER HARRIS-RITTER:** All right.
23 Mr. Holder, you also have the right to an impartial Panel.
24 Do you have any objection to the Panel?

25 **INMATE HOLDER:** No.

26 **PRESIDING COMMISSIONER HARRIS-RITTER:** And Mr.
27 Pitman, do you have any objection to the Panel?

1 ATTORNEY PITMAN: No.

2 PRESIDING COMMISSIONER HARRIS-RITTER: All right.
3 Mr. Holder, you will receive a copy of our written
4 tentative decision today. That decision becomes final in
5 120 days. A copy of the decision and a copy of the
6 transcript will be sent to you. In 2004, the regulations
7 related to appeals of our decisions changed. So, if you
8 have any questions regarding an appeal, you should ask
9 your attorney or visit the prison law library, okay?

10 INMATE HOLDER: Yes.

11 PRESIDING COMMISSIONER HARRIS-RITTER: All right,
12 you are not required to admit or discuss your commitment
13 offense; however the Panel does accept as true the
14 findings of the court. Do you understand?

15 INMATE HOLDER: Yes.

16 PRESIDING COMMISSIONER HARRIS-RITTER: All right.
17 Commissioner Harmon, is there any confidential material in
18 the file and will it be used at this hearing?

19 DEPUTY COMMISSIONER HARMON: Yes, there is
20 confidential information, and no, it won't be utilized in
21 today's hearing.

22 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, and
23 Mr. Pitman, I passed the Hearing Checklist marked Exhibit
24 1 over there. I think it's on the other side of your
25 file.

26 ATTORNEY PITMAN: Okay.

27 PRESIDING COMMISSIONER HARRIS-RITTER: If you

7

1 could just look at that and see if you have the same
2 documents and then hand it to Mr. Sequeira from the DA's
3 office so he can do the same, I would really appreciate
4 that.

5 ATTORNEY PITMAN: I actually -- I don't have the
6 crime partner's last hearing transcript. I don't know if
7 that's in there or not. Not that I need it, but --

8 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, I
9 don't believe that I have anything.

10 DEPUTY COMMISSIONER HARMON: It's in the --

11 ATTORNEY PITMAN: It is checked, so.

12 DEPUTY COMMISSIONER HARMON: It's in the
13 confidential file.

14 ATTORNEY PITMAN: Oh, okay. It's not in the
15 materials that I --

16 DEPUTY COMMISSIONER HARMON: No.

17 ATTORNEY PITMAN: --received. Okay. Other than
18 that, I have everything.

19 PRESIDING COMMISSIONER HARRIS-RITTER: Okay. What
20 I have is a page that says see crime partner information
21 in the confidential section of the C-File.

22 ATTORNEY PITMAN: Okay.

23 PRESIDING COMMISSIONER HARRIS-RITTER: So.

24 DEPUTY DISTRICT ATTORNEY SEQUEIRA: (Inaudible) as
25 well, and I have the other documents here.

26 PRESIDING COMMISSIONER HARRIS-RITTER: Thank you.
27 Then I will take that in now as Exhibit 1. And are there

1 any additional documents to be submitted?

2 ATTORNEY PITMAN: I submitted updated letters.

3 PRESIDING COMMISSIONER HARRIS-RITTER: Right, I
4 have the letters and I have the portfolio of documents
5 related to accomplishments post-conviction.

6 ATTORNEY PITMAN: Okay and I also have a copy of
7 the letters for Mr. Sequeira as well, so.

8 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, thank
9 you.

10 DEPUTY DISTRICT ATTORNEY SEQUEIRA: Thank you.

11 ATTORNEY PITMAN: Okay. And that's it.

12 PRESIDING COMMISSIONER HARRIS-RITTER: All right,
13 thank --

14 ATTORNEY PITMAN: And the documents we gave you in
15 the book just showing Mr. Holder's completion of some
16 self-help since the last hearing, and also laudatory
17 chronos over the time he's been in prison, and just a
18 record of his vocational accomplishments, et cetera.

19 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, thank
20 you. And I note they are original documents. We will
21 return them to you after deliberations.

22 ATTORNEY PITMAN: Thank you.

23 PRESIDING COMMISSIONER HARRIS-RITTER: Certainly.
24 And are there any preliminary objections?

25 ATTORNEY PITMAN: No.

26 PRESIDING COMMISSIONER HARRIS-RITTER: All right.
27 Will Mr. Holder be speaking with the Panel?

1 ATTORNEY PITMAN: Yes.

2 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, Mr.
3 Holder, if you could raise your right hand, I'll swear you
4 in. Do you solemnly swear or affirm that the testimony
5 you give at this hearing, will be the truth, the whole
6 truth, and nothing but the truth?

7 INMATE HOLDER: Yes.

8 PRESIDING COMMISSIONER HARRIS-RITTER: Okay. To
9 get started then, I'm going to turn to the probation
10 officer's report, pages two to three. I'm going to read
11 into the record the facts related to the crime itself.

12 "On May 17th, 1990, Kiomi Takazato (phonetic)
13 spent the day with her friend Keith Holder
14 whom she has known for two years and who has
15 many lady friends in the Japanese community.
16 She left her baby in her home with her live-
17 in housekeeper and babysitter, Mariquette
18 Estelilla (phonetic). When she returned
19 home with Keith Holder at 12 or 12:30 a.m.,
20 she found the housekeeper, Estelilla bound
21 and gagged. She was handcuffed to a pole in
22 the living room. Estelilla told her that a
23 man came into her room about 11 p.m.,
24 grabbed her by the hand and led her into the
25 living room where he handcuffed, gagged her,
26 and blindfolded her. He told her not to
27 call the police or he would kill everyone in

10

1 the house. He then took the baby. Holder
2 found a ransom note, which read, I want
3 \$400,000, 24 hours. I will call. No cops
4 or you never see baby. They decided not to
5 call the police. Later in the morning,
6 Holder told Kiomi that he had received a
7 call from a man who said the baby was at the
8 Compton Police Department and was all right;
9 however, because the kidnapper threatened to
10 return and kill everyone, they decided to
11 tell the police that the baby had been taken
12 by a friend, and that everything was okay.
13 After they got the baby, they would then
14 tell the police the truth. When they
15 arrived at the Compton Police Department,
16 the police separated them, and after
17 questioning both of them, arrested Holder.
18 At 11:35 p.m. on May 17th, 1990, witness
19 Ronald Coleman called the police regarding a
20 kidnapping. He told the police that the
21 kidnapping was over a mafia-type drug deal
22 and that the baby was from wealthy Chinese
23 parents. He indicated that the kidnapper
24 was Steve Rose. With the help of the
25 witness, the police stopped Steve Rose at
26 11:45 p.m. while he was driving a blue BMW
27 and the victim's baby was found in the

1 vehicle."

2 Mr. Holder, what caused you to be involved in this crime?

3 **INMATE HOLDER:** First, I would like to say thank
4 you for giving me the opportunity to explain. And it was
5 a terrible thing that I've done. And I'm not going to
6 minimize my part in this crime. I'm totally responsible
7 for everything that happened with this crime. And what
8 caused me to be part -- take part in this crime was that
9 at the time, you know, I was in love with Kiomi and at the
10 time I was running a small sightseeing tour business. And
11 I knew at the time that I didn't, you know, I didn't have
12 the financial ability to afford the kind of lifestyle that
13 she was used to. And the idea was my idea, and it was all
14 about just trying to scare Mr. Takazato into thinking that
15 the baby was going to be harmed and the baby was not going
16 to be returned, and we was just actually trying to
17 embezzle money from him, so I can invest the money into my
18 business and try to afford a lifestyle that I know she was
19 used to. So, I'm not going shift blame to anyone. I'm
20 fully responsible for what I've done, and I'm very sorry
21 for what I've done. I think the record will reflect from
22 the very first Board Hearing, I've always been
23 straightforward and honest about my part in this crime.
24 And I know I've done some things wrong. And of course if
25 I can make it right, I can change it, I would. I did that
26 crime. It was something that I know that I should not
27 have done, and I was wrong for doing what I've done.

1 PRESIDING COMMISSIONER HARRIS-RITTER: What
2 happened to your relationship with her after this -- all
3 the truth came out about it?

4 INMATE HOLDER: Well, Kiomi and I still stayed
5 friends. We communicated for a short time while I was in
6 prison until fell ill to cancer, and then she passed away
7 in two years after I was in prison, she passed away. But,
8 in the process of while I was in prison and communicating
9 with her, you know I made amends to her the best way I
10 can. You know, I wrote letters. She wrote letters. We
11 communicate with each other and I apologized to her, and I
12 also apologized to Mr. Hayashita (phonetic)) by a letter
13 that I sent to her, and you know, I'm not saying that I
14 don't know if he ever got it or not, but I did my best to
15 try to make amends. And I think my time in prison, I have
16 learned a lot. And I really reflected back on the things
17 that I have done, and I got involved in this case. And I
18 know that it was something that I should have never ever
19 thought of doing, or even been involved with doing, you
20 know. But, we stayed in communication with each other
21 until she passed away.

22 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

23 ATTORNEY PITMAN: May I just add something?

24 PRESIDING COMMISSIONER HARRIS-RITTER: Certainly.

25 ATTORNEY PITMAN: There is a letter that Kiomi had
26 written to the Board several years ago. And we have a
27 copy of that. Let's see here.

1 PRESIDING COMMISSIONER HARRIS-RITTER: I don't
2 have it.

3 ATTORNEY PITMAN: This is -- and then
4 unfortunately, she went back to Japan and was stricken
5 with ovarian cancer at a young age and passed away. But
6 this was prior to that. And we also have the envelope
7 that's on the page beneath.

8 PRESIDING COMMISSIONER HARRIS-RITTER: All right,
9 and will you need to refer to this during the hearing?

10 ATTORNEY PITMAN: I just want to make sure that
11 the Board is aware of that.

12 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, well
13 I meant this. Can we keep this now or do I need to get it
14 back from you during our deliberations so we can review it
15 during deliberations?

16 ATTORNEY PITMAN: No, you can look at it during
17 deliberations, yeah.

18 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

19 DEPUTY DISTRICT ATTORNEY SEQUEIRA: I don't know
20 that I've ever seen that letter. I don't have a copy of
21 that.

22 PRESIDING COMMISSIONER HARRIS-RITTER: All right.

23 ATTORNEY PITMAN: I knew it was submitted. It may
24 be in one of the files, but it was submitted at one Board
25 Hearing.

26 PRESIDING COMMISSIONER HARRIS-RITTER: Okay. Oh,
27 I see that there's a letter, and do you know approximately

14

1 what year this was? Because I can't read the postmark.

2 INMATE HOLDER: I think that was in '91.

3 PRESIDING COMMISSIONER HARRIS-RITTER: All right.

4 INMATE HOLDER: '91, I believe.

5 PRESIDING COMMISSIONER HARRIS-RITTER: Let me --

6 INMATE HOLDER: If I'm not mistaken, there's a

7 copy of that letter in my C-File.

8 PRESIDING COMMISSIONER HARRIS-RITTER: There would

9 be. It just wasn't in our packets because it's so old.

10 So, let me pass this back. We'll let the Deputy District

11 Attorney have an opportunity--

12 ATTORNEY PITMAN: Okay.

13 PRESIDING COMMISSIONER HARRIS-RITTER: -- to take

14 a look at it, and then if you could just leave it here

15 when we deliberate --

16 ATTORNEY PITMAN: Sure.

17 PRESIDING COMMISSIONER HARRIS-RITTER: -- then

18 we'll have a chance to review it at that time.

19 ATTORNEY PITMAN: Okay.

20 PRESIDING COMMISSIONER HARRIS-RITTER: Okay,

21 anything further Mr. Pitman, on this subject?

22 ATTORNEY PITMAN: No, I just wanted to bring --

23 PRESIDING COMMISSIONER HARRIS-RITTER: No, I

24 appreciate that. Mr. Holder, it appears to me this was a

25 pretty complicated scheme. Would you agree?

26 INMATE HOLDER: Yes.

27 PRESIDING COMMISSIONER HARRIS-RITTER: How long

15

1 did it take you to plan it?

2 INMATE HOLDER: I can't say exactly how long it
3 took. It was, like over maybe two or three weeks.

4 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

5 INMATE HOLDER: Thinking about (inaudible).

6 PRESIDING COMMISSIONER HARRIS-RITTER: And I
7 believe the only prior criminal record you had here was
8 related to a grand theft property case in Glendale in
9 1984?

10 INMATE HOLDER: Yes.

11 PRESIDING COMMISSIONER HARRIS-RITTER: And that
12 was forgery of a name on a credit card?

13 INMATE HOLDER: Yes.

14 PRESIDING COMMISSIONER HARRIS-RITTER: And you
15 received two-year summary probation for that. Is that
16 right?

17 INMATE HOLDER: Yes.

18 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

19 ATTORNEY PITMAN: And I can I just add that was a
20 misdemeanor. It was --

21 PRESIDING COMMISSIONER HARRIS-RITTER: Right, it
22 says --

23 ATTORNEY PITMAN: It was filed as a misdemeanor.

24 PRESIDING COMMISSIONER HARRIS-RITTER: It says
25 misdemeanor. All right, so this complicated scheme is a
26 pretty big jump from that misdemeanor, would you agree?

27 INMATE HOLDER: Yes.

1 PRESIDING COMMISSIONER HARRIS-RITTER: Didn't you
2 have concerns about taking such a big step?

3 INMATE HOLDER: Truthfully, I didn't really think
4 about it on that (inaudible). You know I think it was
5 just my involvement with her and how I felt about her. I
6 was just trying to secure our life together, you know, and
7 I really didn't think about the difference between, you
8 know, the credit card in Glendale, and this, to be honest
9 with you.

10 PRESIDING COMMISSIONER HARRIS-RITTER: What about
11 the difference between right and wrong?

12 INMATE HOLDER: Oh, yes. That's definitely. I
13 know the difference. I have always admitted to that; that
14 I've done something wrong.

15 PRESIDING COMMISSIONER HARRIS-RITTER: All right.
16 Let's talk a little bit then about your social background.
17 You came to the United States from Trinidad, is that
18 right?

19 INMATE HOLDER: Yes.

20 PRESIDING COMMISSIONER HARRIS-RITTER: And you
21 came here illegally.

22 INMATE HOLDER: No.

23 PRESIDING COMMISSIONER HARRIS-RITTER: No?

24 INMATE HOLDER: No.

25 PRESIDING COMMISSIONER HARRIS-RITTER: Why is
26 there an INS hold?

27 INMATE HOLDER: Because if you're not a -- I'm not

17

1 a resident -- I'm a resident of the United States. I'm
2 not an illegal resident of the United States. So, all
3 residents of the United States, if you're not a citizen,
4 you have to -- you have an immigration hold after
5 (inaudible).

6 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

7 ATTORNEY PITMAN: He was a permanent legal
8 resident. He came here as a child when -- were you ten
9 or --

10 INMATE HOLDER: Ten years old.

11 ATTORNEY PITMAN: Approximately ten years old with
12 his family.

13 PRESIDING COMMISSIONER HARRIS-RITTER: To Rhode
14 Island?

15 INMATE HOLDER: Yes.

16 ATTORNEY PITMAN: And then the INS; if someone's
17 been convicted of a felony offense, they typically will
18 place a hold on that person so when the person is released
19 from prison, they make a determination of whether the
20 person is subject to deportation and whether they're going
21 to --

22 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

23 ATTORNEY PITMAN: -- take kind of action with
24 respect to the person, so.

25 PRESIDING COMMISSIONER HARRIS-RITTER: So with
26 you, as opposed to someone who's here illegally, there is
27 a potential for your going back, but it's not a hundred

1 percent. Is that accurate?

2 INMATE HOLDER: No, I'm going to be deported. I
3 have heard some checks on the new immigration laws and
4 this is a serious felony.

5 PRESIDING COMMISSIONER HARRIS-RITTER: You're
6 going back?

7 INMATE HOLDER: I'm going to be deported back to
8 Trinidad.

9 ATTORNEY PITMAN: I would just say that in 1996,
10 Congress passed new immigration laws.

11 PRESIDING COMMISSIONER HARRIS-RITTER: Right.

12 ATTORNEY PITMAN: It (inaudible) to people who
13 have been convicted of crimes and it would appear you
14 know, that he will be deported. There is a slim
15 possibility that you know, he would not be, but it looks
16 like he will be deported.

17 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

18 ATTORNEY PITMAN: It's a deportable offense it
19 falls under what they call automatic exclusion, so.

20 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, thank
21 you. What got you from Rhode Island to California?

22 INMATE HOLDER: Well, one thing was the weather,
23 and I used to do a lot of music shows and fashion shows
24 and things of that sort and I felt California was a place
25 that I could really blossom in doing my entertainment
26 business here. And that was one of the strong reasons
27 that brought me from Rhode Island to California. Rhode

1 Island is a very small place. There's not a lot of
2 entertainment there and California has a bigger, you
3 know --

4 PRESIDING COMMISSIONER HARRIS-RITTER: More
5 opportunities?

6 INMATE HOLDER: More opportunities for you know,
7 for the stuff that I was --

8 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, now
9 you graduated from high school in Providence. Is that
10 correct?

11 INMATE HOLDER: Yes.

12 PRESIDING COMMISSIONER HARRIS-RITTER: And what
13 was your life like growing up in your home with your
14 parents? Do you have any -- you have brothers and
15 sisters, I know because we have letters. How many of you
16 in your family?

17 INMATE HOLDER: Four boys and one girl. And I
18 have a sister in Trinidad.

19 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.
20 Anybody else in your family have trouble with the law?

21 INMATE HOLDER: No.

22 PRESIDING COMMISSIONER HARRIS-RITTER: All right.
23 What about any alcohol or drug abuse in your family;
24 anything like that?

25 INMATE HOLDER: Absolutely not. I'm saying,
26 that's one thing that I would like to speak to the Board
27 about me because I've never been involved with any illegal

20

1 drugs or alcohol.

2 PRESIDING COMMISSIONER HARRIS-RITTER: Okay. All
3 right, at this time, I'm going to turn the hearing over to
4 Commissioner Harmon, and he's going to go over with you
5 post-conviction factors, then after that, he will return
6 the chair to me and we'll talk about parole plans, okay?

7 DEPUTY COMMISSIONER HARMON: Okay, good afternoon
8 again there, Mr. Holder.

9 INMATE HOLDER: How you doing, Mr. Harmon?

10 DEPUTY COMMISSIONER HARMON: Good. I want you to
11 listen carefully because we're going to make sure the
12 record is correct. And we'll clear it up if it's not. It
13 shows here your last hearing was August 6, of 1997, excuse
14 me, I mean June 27th of '05. And that was a one-year
15 denial. That represented subsequent number -- subsequent
16 hearing number three. You were received at CTF August
17 6th, 1997 from Folsom State Prison. Your custody level
18 today is a Medium A. Your classification score revised is
19 19. Does that sound right?

20 INMATE HOLDER: Yes, Mr. Harmon.

21 ATTORNEY PITMAN: You know, if I may, I think the
22 last hearing was actually February of '05, not June. I
23 may be wrong, but I'm pretty sure it was February 3rd of
24 '05.

25 DEPUTY COMMISSIONER HARMON: Do you have a
26 transcript?

27 ATTORNEY PITMAN: We have a transcript here.

21

1 DEPUTY COMMISSIONER HARMON: Well, then if it's on
2 the transcript, I guess the C-File is -- the 112 is --
3 2/3/05?

4 ATTORNEY PITMAN: Yeah.

5 DEPUTY COMMISSIONER HARMON: Okay, we'll go with
6 that.

7 ATTORNEY PITMAN: Okay. That's when it was. I
8 was here, so.

9 DEPUTY COMMISSIONER HARMON: Okay. Mr. Holder,
10 that sounds right? Okay, we're going to focus on the
11 period of time since your last hearing. I'm going to use
12 your counselor's report as reference. Listen carefully.
13 If there's information I leave out, I'll give you an
14 opportunity to respond, okay?

15 INMATE HOLDER: (Inaudible).

16 DEPUTY COMMISSIONER HARMON: It does show that
17 from May 3rd of '04 to October 15th of '05, it said that
18 you remained at CTF in the general population during the
19 entire period of time, Medium A custody. There's no
20 vocational training, no work during this period. It says
21 that you were on the Support Services waiting list. It
22 says that you were participating in the 12 Step Program,
23 and that was based on various chronos in '04 and '05.
24 There was no psychiatric treatment, you remained
25 disciplinary free. It says you participated in the Cage
26 Your Rage Program, an anger management group program
27 verified by a chrono dated February 11th of '05. It shows

22

1 that you completed Dr. Thomas Gordon's Family
2 Effectiveness Training, Harmony in the Home self-help
3 anger management program. That also being verified on a
4 128B dated April 14th of '05. Then the counselor picks it
5 up from October 16th of '05 to September 1st, of '06.
6 During this period of time you remained in CTF in the
7 general population, Medium A custody. There's no
8 vocational training, no academics during this period.
9 There's no work noted. It says that you are attending the
10 12 step based on various chronos in October and December
11 '05. There's no psychiatric treatment and you continue to
12 remain disciplinary-free. That is completed by Counselor
13 Brown and that's common spelling for the transcriber.
14 Does that pretty much bring us up to date?

15 INMATE HOLDER: Yes, Mr. Harmon.

16 DEPUTY COMMISSIONER HARMON: What is your current
17 assignment?

18 INMATE HOLDER: I don't have an assignment but I
19 note that I'm not assigned officially, but I volunteer.

20 DEPUTY COMMISSIONER HARMON: When is the last time
21 you held a job?

22 INMATE HOLDER: Since I left -- when I left. 2004
23 when I left North Facility.

24 DEPUTY COMMISSIONER HARMON: 2004? Okay, that's
25 what -- okay, that would be pretty (inaudible).

26 ATTORNEY PITMAN: And if I might just say, just so
27 it's clear, he's on a waiting list for work, but

23

1 apparently the institution doesn't have jobs. So, he's
2 willing and able and available and -- but, unfortunately
3 they don't have any job for him at this point.

4 DEPUTY COMMISSIONER HARMON: Okay.

5 ATTORNEY PITMAN: He does volunteer though.

6 DEPUTY COMMISSIONER HARMON: Okay. You've held
7 some jobs since being in the institution. Some of those
8 jobs include Porter, Adult Basic Education, Culinary.
9 You've been in the Vocational Program of Janitorial.
10 You've maintained good work reports when you are working.
11 Now, you have a lot of certificates for different phases
12 of your Janitorial Program as well as the stuff that you
13 did on your own. I was going to say -- now you were
14 transferred at some point during that program, right? Did
15 you complete the program?

16 INMATE HOLDER: Yeah, I completed the program.

17 DEPUTY COMMISSIONER HARMON: Okay, did you -- what
18 year did you finally complete that?

19 INMATE HOLDER: It was in 90 -- '97, when I left
20 the same year I got transferred. It was the same year I
21 completed that program.

22 DEPUTY COMMISSIONER HARMON: Okay, what happened
23 to the Mill and Cabinet in '94. I didn't see a completion
24 certificate there.

25 INMATE HOLDER: I know we spoke about that last
26 time if I'm not mistaken.

27 DEPUTY COMMISSIONER HARMON: Help me out.

24

1 INMATE HOLDER: I spoke about that last time.
2 When I left Delano, I think my supervisor was Martinez,
3 and he was supposed to send because that was a sudden
4 move. And he was supposed to send my completion chrono to
5 that Cabinet Making, and I never received it.

6 DEPUTY COMMISSIONER HARMON: Okay, so that's still
7 not resolved then?

8 INMATE HOLDER: I haven't received the chrono, but
9 I know I've completed that trade --

10 DEPUTY COMMISSIONER HARMON: Okay.

11 INMATE HOLDER: -- while I was there.

12 DEPUTY COMMISSIONER HARMON: Okay, I don't have
13 it, so I looked in there to try to find out what the final
14 comments were, but I'm sure you've acquired some skills in
15 there from the other ones that I read. Let's see, I guess
16 you received your high school diploma in Trinidad in '79?

17 INMATE HOLDER: In Providence, Rhode Island.

18 DEPUTY COMMISSIONER HARMON: Was it in Providence,
19 Rhode Island? I didn't find a copy of your diploma in
20 there. Is it?

21 INMATE HOLDER: It's in my -- it should be in my
22 C-File, but I have a --

23 DEPUTY COMMISSIONER HARMON: I didn't --

24 INMATE HOLDER: (Inaudible).

25 DEPUTY COMMISSIONER HARMON: I didn't see it in
26 there either.

27 INMATE HOLDER: I have a copy (inaudible).

25

1 ATTORNEY PITMAN: In there?

2 INMATE HOLDER: Yeah, the letter.

3 DEPUTY COMMISSIONER HARMON: Well, I can see
4 you've got hundreds of documents so it could have gotten
5 misplaced in there somewhere. Did you see it when you did
6 a C-File review?

7 INMATE HOLDER: I wasn't looking for it, Mr.
8 Harmon.

9 DEPUTY COMMISSIONER HARMON: You should, you know,
10 you should always make sure your stuff is in there because
11 a lot of stuff gets lost and misplaced.

12 INMATE HOLDER: Well, I have a letter from the
13 School Department of (inaudible).

14 DEPUTY COMMISSIONER HARMON: Oh, it's not a
15 diploma, it's a letter?

16 INMATE HOLDER: Yeah. (Inaudible).

17 DEPUTY COMMISSIONER HARMON: Never seen one quite
18 like this, but according to the records of the Providence
19 School Department that Keith Desmond Holder graduated from
20 Central High School in '79. Did they give you anything
21 other than this when you graduated?

22 INMATE HOLDER: I had a diploma, but you know,
23 moving and stuff, you know, when I came to California, you
24 know, my family couldn't find it. I never thought that I
25 would need it.

26 DEPUTY COMMISSIONER HARMON: Okay, because there's
27 a couple of issues here. I mean, I'm assuming, this is

26

1 dated May 7th of '93. Did you want to see that? Is that
2 important?

3 DEPUTY DISTRICT ATTORNEY SEQUEIRA: No, it's okay.

4 DEPUTY COMMISSIONER HARMON: Okay. Let me return
5 this to you counselor, thank you. The reason I bring that
6 up is I need you to help me out here. Although you claim
7 to have a high school diploma, I noted that the TABE test
8 in 1995 -- I'm going to review some of that with you. You
9 took this particular TABE test January 13th of 1995. And
10 it showed in the area of vocabulary and comprehension, a
11 2.8 grade equivalent.

12 INMATE HOLDER: Uh-huh.

13 DEPUTY COMMISSIONER HARMON: And then in math, it
14 showed a total scoring of 3.8. In the area of language,
15 mechanics, expression, it showed a scoring of 2.0 and
16 total battery of 2.8, January 13th of 1995. And that was
17 pretty consistent with the other TABE work that you had
18 done. Now, I went to an old doctor's report just to see
19 if there was anything there, and I found a report from
20 February 28th, 1995 from Joseph Willis, PhD, Staff
21 Psychologist. That's the common spelling, W-I-L-L-I-S.
22 This particular report was written by the doctor one month
23 after you took your TABE test, and this is what the doctor
24 said under recommendations in part,

25 "If he is not paroled, or in the interim
26 before he is paroled, it would be highly
27 desirable for him to improve his education.

1 A letter written by the subject was in the
2 medical file, and appears to have been
3 written by a third grader."

4 Now, that's what the doctor wrote, so that was February
5 28th of 1995. And then you took a TABE test June 5th,
6 1995, just about three months after the doctor wrote that
7 letter. And the results of that particular test are as
8 follows, after the ones I just read, so we stay on the
9 same page here. As you know we have lots here so bear
10 with me a minute. Three months after the doctor wrote
11 that report, you took your TABE test and every category,
12 you scored 12.9. That's as high as you can go. Can you
13 explain to me how you're testing into a 12.9 all the way
14 up and down in a three-month period?

15 **INMATE HOLDER:** Yes, I can. That test that I did,
16 that I scored 12.9 was done in an oral test where I was in
17 the phonics class at Delano. And because of my dyslexia,
18 I was not able to keep up with the time limit, so it was
19 done where I had enough time to do it without any time,
20 and that's why I was able to score a lot higher. And I
21 have a chrono showing that I've completed -- I've
22 graduated from the Phonics Class in the file that you have
23 in front of you in my black folder. That's the reason why
24 I was able to score a little bit higher, Mr. Harmon.

25 **DEPUTY COMMISSIONER HARMON:** Well, let me explain
26 something. That is not a little bit higher. What I saw
27 there was that you were at the third grade level and in

28

1 three months you scored a 12.9; that's as high as you can
2 go. Now, you heard me say the doctor's comments; that the
3 letter appeared that it had been written by a third
4 grader, which is consistent with the scoring. And then I
5 get into the reading, math, language, mechanics,
6 expression, computation, concepts, vocabulary,
7 comprehension; 12.9 in every category. Did you cheat?

8 INMATE HOLDER: No. Mr. Harmon, I took my time
9 with the test. They gave me enough time to take my time
10 with the test, and I believe that's why I scored high.

11 DEPUTY COMMISSIONER HARMON: And what about your
12 writing ability in that three month period? Do you have
13 anything from June of '95 that we could read?

14 INMATE HOLDER: I have a few things that I think
15 I've wrote but it's been -- oh, you can look at some of my
16 602s that I've wrote.

17 DEPUTY COMMISSIONER HARMON: Okay, the reason I'm
18 asking you all these questions is because as you know, you
19 don't have any 115s and that's commendable. But you've
20 got sixteen 128s. Those are behavior issues. And you --
21 I think you're pretty familiar with those. And I just
22 hope that what I'm looking at, and what I'm contemplating
23 in my mind is that these are aberrations in your behavior,
24 and not a pattern of behavior that's gone back to the life
25 crime.

26 INMATE HOLDER: Well, absolutely not, Mr. Harmon.
27 I'm a very different man today.

1 DEPUTY COMMISSIONER HARMON: Let me tell you
2 something Mr. Holder, I've been doing this in one form or
3 another for 38 years. I have a pretty good judge of
4 character, and I'm just wondering how that all came about.
5 That's a good question.

6 ATTORNEY PITMAN: How what came about?

7 DEPUTY COMMISSIONER HARMON: The scoring. That's
8 why I'm asking him that question.

9 ATTORNEY PITMAN: Could I just say one thing
10 before he answers that?

11 DEPUTY COMMISSIONER HARMON: Well, he can stop
12 answering if you'd like.

13 ATTORNEY PITMAN: No, I'm happy to have him
14 answer, but I just wanted to add one thing. I had a -- in
15 the legal document section of the materials that I
16 received, I had filed a sentencing memorandum at the time
17 that he was sentenced, and in there I indicated that he
18 was ten years old when he arrived in Providence, Rhode
19 Island. And he began attending school but had experienced
20 great difficulty with schoolwork there. And then after
21 extensive testing, it came to light that he suffered from
22 dyslexia, a learning disability, which caused him to see
23 letters and numbers backwards. And once his learning
24 disability was discovered, he was placed in special
25 education classes in the school system. And I wrote where
26 he worked extremely hard to overcome his difficulties.
27 And then there was -- I said see attached letter from

1 Kenneth Dion (phonetic) who was Keith's teacher for three
2 years at Central High School in Providence. And then,
3 although still suffering from dyslexia for which there
4 apparently is no cure, he stood out for his determination
5 to succeed in school. The copy that I have here doesn't
6 have the exhibits attached. I don't know if that letter
7 would be in the file.

8 DEPUTY COMMISSIONER HARMON: I don't think that's
9 the issue counselor.

10 ATTORNEY PITMAN: Okay.

11 DEPUTY COMMISSIONER HARMON: I believe that he may
12 have dyslexia. That's not the issue.

13 ATTORNEY PITMAN: Okay.

14 DEPUTY COMMISSIONER HARMON: The issue is how did
15 he recover from dyslexia in three months and score 12.9s
16 in every category.

17 ATTORNEY PITMAN: I think what he's saying and he
18 can explain it further, but is that he took this phonics
19 program, and then when he took the second test, they gave
20 him more time to complete it and part of it was oral. At
21 least that's what I understood the case to be, but.

22 DEPUTY COMMISSIONER HARMON: Do you want to
23 comment (inaudible)?

24 INMATE HOLDER: That's exactly what I said,
25 they -- by having more time, and I think I was able to me
26 more comfortable, take my time with the test, I believe
27 that's why I scored high.

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1 DEPUTY COMMISSIONER HARMON: You can't go any
2 higher. That's the mark of a genius, almost. It is, in
3 terms of a high school scoring. But, okay, that's your
4 explanation. I just wanted to know. It's not something I
5 want to overlook. So, anyway we -- and I don't to take
6 away from the fact that you've had zero 115s and that's
7 excellent.

8 ATTORNEY PITMAN: Could I say one other thing too?
9 There haven't been any 128s since 1999.

10 DEPUTY COMMISSIONER HARMON: I understand. It's a
11 cumulative effect with me.

12 ATTORNEY PITMAN: Yeah, but he had -- since '99,
13 he's been 128-free as well, so.

14 DEPUTY COMMISSIONER HARMON: Okay, thank you.
15 Now, what I came up with in the file is that you've been
16 through the various STDs; hepatitis, TB, HIV programs.
17 You've been involved in the Impact Program in '99, Life
18 Skills in '99, Americane in '94, Cage Your Rage in '06,
19 that's the new one. You did some self-help with Dr.
20 Carswell in '02. Did you bring a copy of the documents
21 you wrote to Dr. Carswell with you today? On the self-
22 help books? So I could look at those?

23 INMATE HOLDER: What I wrote to him? No, I
24 didn't. I sent it to her and then she sent me the chronos
25 and stuff. I didn't bring (Inaudible).

26 DEPUTY COMMISSIONER HARMON: Okay, you didn't keep
27 yourself a copy of any of that?

1 INMATE HOLDER: I don't remember if I did or not.

2 DEPUTY COMMISSIONER HARMON: Okay. Then you did
3 the Self Determination Program in '94. You did the Anger
4 Management in April '05 that we discussed that. And
5 you've been in AA and NA now going back -- how long have
6 you been in that continuous this time?

7 INMATE HOLDER: I've been going to NA and AA since
8 1995 from Delano to Folsom, and Soledad.

9 DEPUTY COMMISSIONER HARMON: Okay, and you got all
10 12 steps memorized for me?

11 INMATE HOLDER: I have one to eight memorized, but
12 I going to be truthful, I really gave more attention to
13 step eight; make a list of all (inaudible) to make amends
14 to them all. I thought that was very important. And on
15 step five is that I admit to God and to ourselves, and to
16 other human beings the exact nature of my wrong. And
17 four -- step four was -- I don't know this right now, but
18 I can cite the steps from one through eight.

19 DEPUTY COMMISSIONER HARMON: Do you remember the
20 tenth step?

21 INMATE HOLDER: No, I don't. I don't (inaudible)
22 the tenth step is on.

23 DEPUTY COMMISSIONER HARMON: Okay, and why don't
24 you know all 12 steps? Your reading comprehension levels
25 are as high as they can go.

26 INMATE HOLDER: Well, the reason why I don't study
27 the steps, Mr. Harmon is because the two I just mentioned

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1 to you was -- it's spiritual and I made amends to all, you
2 know, I made a list of all these people that I've harmed
3 and can willing to make amends to them all, which was step
4 eight, because I feel that those steps are very important
5 for my life; of what I've done. And the program that I go
6 to, NA and AA, it's a program that I go and I listen to
7 other people's you know, testimonies and things, and maybe
8 I'll get something out of it, but I'm not a drug user.
9 I've never been in alcohol problems, and I've never been
10 involved in anything illegal when it's coming to any kind
11 of illegal substance. So, if I go to AA, it helps me out
12 spiritually. It helps me out with the things that I, you
13 know, that I've done. Like I mentioned those steps to
14 you. It helps me over that because I know that I've done
15 some wrong things and I want to recognize those things.
16 And I've recognized those things. But, I'm not -- AA and
17 NA is really set up for you know, the drug rehabilitation
18 situation, the alcoholic rehabilitation situation, and I
19 notice that every Board that I come to, I really get you
20 know, beat up about it (inaudible).

21 **DEPUTY COMMISSIONER HARMON:** Well, I disagree with
22 you also, Mr. Holder. That's why they're beating you up.
23 Because you can learn a lot from the 12 steps that don't
24 even apply to drugs or alcohol, like the fourth step that
25 you don't remember real well. It's dealing with a moral
26 inventory, isn't it?

27 **INMATE HOLDER:** Make a searching moral inventory

1 of yourself.

2 DEPUTY COMMISSIONER HARMON: Right, so there's a
3 lot. And when you read the tenth, it's basically a review
4 of four. That's what it tells you. That's why I asked
5 you that. That's how important ten is. But, yeah, I'm
6 real familiar with all the programs. You also, I found in
7 there apparently you're involved in basketball. Is that
8 right? -You've had a lot of recognition to that?

9 INMATE HOLDER: Yes.

10 DEPUTY COMMISSIONER HARMON: Basketball player?
11 Okay. Is there any other accomplishments? I know you
12 gave us a big list here of things that you've done and
13 that always helps us a lot. That's wonderful. It saves
14 us a lot of time. Is there anything else of your
15 accomplishments that I missed?

16 INMATE HOLDER: Well, if you want to look at some
17 of the old stuff that I've been involved in before I got
18 involved in, in this case. You know, things that I've
19 done in my past, you know.

20 DEPUTY COMMISSIONER HARMON: Well, I'm stating --
21 remember now, right now, I'm only in post-conviction
22 factors. That's what the Chair has told me to cover with
23 you, so, and it's really important from the day that you
24 were received into the Department of Corrections until
25 today; is there any other accomplishments you want me to
26 point out?

27 INMATE HOLDER: I think you covered it all, Mr.

1 Harmon.

2 **DEPUTY COMMISSIONER HARMON:** Okay, we're going to
3 go onto your doctor's reports, and before we do, I want to
4 ask you a couple of very important questions. And the
5 first question I want to ask you is do you believe you
6 pose a risk to the safety of the people outside of the
7 prison walls today?

8 **INMATE HOLDER:** No, Mr. Harmon.

9 **DEPUTY COMMISSIONER HARMON:** Okay, what do you
10 believe makes you a different man today than the man that
11 came into prison for the life crime?

12 **INMATE HOLDER:** Because I know the difference
13 between wrong and right. I have not lived all my life
14 being involved in crime. I have been -- I've worked
15 before. I'm from a very solid family. I understand the
16 gravitation of what I have done. I know that I can be
17 much better person, and I don't want to live the life of
18 just living in prison or hurting other people. You know,
19 I would like to do unto others that I would like others to
20 do unto me. That's the way I'm going to live my life from
21 the day that you have decided to give me a second chance.
22 I'm not going to be in trouble any more. I know that. I'm
23 almost 50 years old, I'm for 50 you know, and this not the
24 way I want to live my life. So, I know that when I leave
25 here, the day I leave here, I'm going to live my life as a
26 productive member of society wherever I go. I'm never
27 going to be in trouble again, because I don't want to be

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1 locked up and be away from my family. My mom is old. My
2 dad is old. I don't want to be in prison when I lose
3 them, you know? And I just know that I'm never going to
4 be in trouble again. There's no doubt in my mind. I'm
5 not from that kind of a background. I got myself involved
6 in a crime. I got caught, I did my time, and while I was
7 here, I wanted to show people that I can be here without
8 getting involved in the things that you know, plague most
9 of the prison, you know? So, I believe that when I get
10 out, I won't have a problem.

11 DEPUTY COMMISSIONER HARMON: Okay.

12 INMATE HOLDER: I always live my life pretty good.

13 DEPUTY COMMISSIONER HARMON: Okay, doctor's
14 reports. In August '06, you have a new report and it's
15 from Dr. Marek, M-A-R-E-K, a psychologist. And he writes
16 a brief report. I'm going to just take parts of it.
17 Listen carefully. This one and the one most recent to
18 that I'll cover also briefly. I'll give you an
19 opportunity to respond. The doctor starts out with your
20 history which has been gone over at length with the
21 Commissioner. I'll go directly to the area of current
22 mental status and treatment needs. And it says in part,
23 that on the day the interviewed with you, it says,
24 "He was calm and cooperative. His behavior was
25 appropriate. He exhibited a good insight remorse
26 especially as it relates to his crime." Under diagnostic
27 Impressions; under Axis I and II, None; Axis V, a GAF of

1 85. "The prognosis is positive for him to be able to
2 maintain his current mental state in the community upon
3 parole." In the area of the review of the life crime, it
4 says,

5 "Holder took full responsibility for his
6 role in the kidnapping. He exhibited
7 remorse and has -- and had good insight into
8 the harm that was caused. His remorse for
9 his crime appears genuine and appropriate."

10 In the area of Assessment of Dangerousness,

11 "His violence potential is obviously lower
12 than the average inmate based on his good,
13 recent institutional adjustment. If
14 released to the community, his violence
15 potential is estimated to be no higher than
16 the average citizen in the community. It
17 appears his involvement in the incident
18 offense was essentially an aberration for
19 him. There are no obvious or significant
20 violence precursors for him."

21 In the heading of Clinical Observations, Comments, or
22 Recommendations, in part,

23 "He is competent and responsible for his
24 behavior. He does not have a mental health
25 disorder which would necessitate treatment
26 either during his incarceration or on
27 parole. And parole decision should be based

1 on custody factors."

2 The one just prior to that was from '02. It was from
3 December. Dr. Martha Carswell, C-A-R-S-W-E-L-L, the staff
4 psychologist. In that particular report, the doctor once
5 again starts out with your history. It is repetitive. I
6 will go directly to the area of -- excuse me a second.
7 Let's see, Dr. Carswell's report. I'll go to the area of
8 Plans if Granted Release. I guess it's Article XI or
9 whatever. Roman numeral XI. In part it says, "His
10 prognosis for community living is very positive,
11 especially with his family's support." In the area of
12 Clinical Assessment under Current Mental Status and
13 Treatment Needs, in part it says,

14 "Inmate Holder was cooperative and alert.
15 His mood and affect were within normal
16 limits. There was no evidence of a mood or
17 a thought disorder. His judgment appeared
18 to be sound. There was no evidence of a
19 mood or a thought disorder. Current
20 Diagnostic Impressions: Axis I, No
21 Contributory Clinical Disorder; Axis II, No
22 Contributory Personality Disorder; and Axis
23 V, A Global Assessment of Functioning, a GAF
24 of 85. His prognosis is positive for being
25 able to maintain his current mental state in
26 the community upon parole."

27 In the heading of Review of the Life Crime, in part,

1 "He took full responsibility for his part in
2 the kidnapping. He also demonstrated
3 adequate empathy and awareness for the harm
4 that he caused the victims and those to his
5 life. Irregardless of the inmate's current
6 explanation of the crime versus the omission
7 of this version in the court record, Inmate
8 Holder still appears to have adequate
9 understanding and empathy for the
10 circumstances leading up to the crime and
11 the damage done to the victims. His remorse
12 for his crime appears to be appropriate and
13 genuine."

14 In the heading of Assessment of Dangerousness, in part,
15 "This inmate's violence potential within a
16 controlled setting is estimated to be
17 significantly below average relative to the
18 Level II inmate population, and if released
19 to the community, his violence potential is
20 estimated to be no higher than the average
21 citizen in the community. There are no
22 significant risk factors for this inmate
23 that could be precursors to violence."

24 Under Clinical Observations, Comments, and
25 Recommendations, in part, "This inmate does not have a
26 mental health disorder which would necessitate treatment
27 either during his incarceration period or following

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1 parole." And that's part of Dr. Carswell's report. So,
2 what I've done there Mr. Holder, is I've taken parts of
3 the two most recent doctor's reports, I've taken parts of
4 the counselor's reports and parts of your entire
5 institutional adjustment. I may have inadvertently left
6 out areas that are important to you and your attorney.
7 I'm going to go back to the Chair here in just a second.
8 But before I do, is there anything that you wish to add to
9 the area that I covered today?

10 INMATE HOLDER: No, Mr. Harmon.

11 DEPUTY COMMISSIONER HARMON: Did we cover things
12 okay?

13 INMATE HOLDER: Yes, Mr. Harmon.

14 DEPUTY COMMISSIONER HARMON: Counselor, are you
15 satisfied?

16 ATTORNEY PITMAN: Yes.

17 DEPUTY COMMISSIONER HARMON: Thank you. I'll
18 return to the Chair.

19 PRESIDING COMMISSIONER HARRIS-RITTER: Thank you.
20 Mr. Holder, let's talk about your parole plans now. I
21 have do have a number of letters; copies and the
22 originals, provided by your attorney. And I don't have
23 any already in there. Let's go through those. I have the
24 first letter, is from your stepsister, Ann Holder. Is
25 that correct? She lives in Trinidad?

26 INMATE HOLDER: Yes.

27 PRESIDING COMMISSIONER HARRIS-RITTER: And she's

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1 offering you in a letter dated June 1st, 2006, employment
2 in her catering business. Is that correct?

3 INMATE HOLDER: Yes.

4 PRESIDING COMMISSIONER HARRIS-RITTER: And also
5 there's a letter from your brother Gerard offering
6 financial assistance. That letter is dated January 27th,
7 2006. And --

8 ATTORNEY PITMAN: May I just say some -- with
9 respect to Gerard, I would just indicate he's been very
10 supportive of Keith. He is an attorney and has worked
11 really hard, has this consulting business, which goes --
12 they are hired by different companies, large businesses to
13 set up their diversity training-type programs. And he's
14 been extremely supportive, and in the letter it indicates
15 that. And he's also indicated to me that if in the event
16 that Keith is released, you know, he will provide financial
17 assistance to him.

18 PRESIDING COMMISSIONER HARRIS-RITTER: Right and
19 also a potential job offer.

20 ATTORNEY PITMAN: And potential job offer in Rhode
21 Island. I mean, he would do anything.

22 PRESIDING COMMISSIONER HARRIS-RITTER: Well, he
23 even indicates that Keith could assist with developing
24 business presence for GH Consulting in Trinidad.

25 ATTORNEY PITMAN: Right.

26 PRESIDING COMMISSIONER HARRIS-RITTER: So, either
27 place.

1 ATTORNEY PITMAN: That's correct.

2 PRESIDING COMMISSIONER HARRIS-RITTER: All right,
3 and then the next letter is from you, Mr. Pitman, offering
4 employment in Los Angeles.

5 ATTORNEY PITMAN: That's correct.

6 PRESIDING COMMISSIONER HARRIS-RITTER: Is that
7 correct? So, that's another job offer. And then the next
8 letter is from Joe Brooks. It's dated, oh and I didn't
9 say your letter is October 19th, 2006. Then January 25th,
10 2006 a letter from Essex, Newbury by Joe Brooks from
11 Haverhill, Massachusetts support for you. It's basically
12 a letter of support and a job offer in his construction
13 company if you were to be in the Massachusetts area. And
14 February 21st, 2006, a letter from Marcellus Sharp, the
15 President of Customized Cleaning Services, which is a
16 letter of support, and then March 11th, 2006 from Brian
17 Tunstall, T-U-N-S-T-A-L-L, who lives in Lake Balboa,
18 California, which I believe, is in the Los Angeles area.

19 ATTORNEY PITMAN: That's correct.

20 PRESIDING COMMISSIONER HARRIS-RITTER: Then that's
21 an offer of financial support. And then a letter from
22 Leonard Lopes, L-O-P-E-S, dated February 23rd, 2006, also
23 a letter of support. And then the next letter is dated
24 January 18th, 2006 from Lorraine Ramos and that's also a
25 letter of support. Then the next letter is from Joseph C-
26 R-A-V-E-I-R-O, Craveiro indicating support, dated February
27 4th, 2006. Another letter of support dated February 9th,

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1 2006 from your friend Butch Correia, C-O-R-R-E-I-A, in
2 Rhode Island. And the next letter from your fiancé,
3 Hiroko Takagi? Is that -- how do you say her last name?

4 INMATE HOLDER: Takagi.

5 PRESIDING COMMISSIONER HARRIS-RITTER: Takagi.

6 Thank you. And where -- there's no address on this.

7 Where does she live? What city?

8 INMATE HOLDER: She lives in Japan.

9 PRESIDING COMMISSIONER HARRIS-RITTER: In Japan.

10 INMATE HOLDER: She's in Japan. You know, I'm
11 sorry. Osaka.

12 PRESIDING COMMISSIONER HARRIS-RITTER: Osaka? And
13 how long have you known her?

14 INMATE HOLDER: Since 1997, I believe, '97.

15 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

16 INMATE HOLDER: '97, (inaudible).

17 PRESIDING COMMISSIONER HARRIS-RITTER: The reason
18 I'm asking is because there's someone referred to in the
19 probation officer's report whose name is similar to this.
20 It's spelled differently than she spells it, but it could
21 be pronounced Hiroko also, who was a friend of yours who
22 had an interest in the case, and I'm wondering if it's the
23 same person, that's all.

24 ATTORNEY PITMAN: It is. He's known her since
25 before the commitment offense.

26 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

27 ATTORNEY PITMAN: Before he was convicted.

1 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, so
2 longer ago than 1997. All right, then there's a letter
3 from your mother, Sheila Holder, and it's dated March
4 21st, 2001, but there's a note at the bottom from your
5 brother that indicates your mother has dementia and so
6 she's unable to write a new letter. Is that your
7 understanding as well?

8 INMATE HOLDER: Yes, (inaudible) and she also
9 unfortunately suffered a stroke in September of this year.

10 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, so
11 she's not able to write a new letter.

12 INMATE HOLDER: That's correct.

13 PRESIDING COMMISSIONER HARRIS-RITTER: All right,
14 and then there's a letter from your father, Elias Holder,
15 dated January 19th, 2006. There's also one from him in
16 '03, both offering support. And then there's a letter
17 dated February 14th, 2006 from Linell Baptiste (phonetic)?

18 INMATE HOLDER: Yes.

19 PRESIDING COMMISSIONER HARRIS-RITTER: And who is
20 Linell?

21 INMATE HOLDER: She's my sister.

22 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.
23 That's what I thought, I just wanted to make sure. That's
24 a letter of support. And then there's a letter from
25 Diego, is it Jones?

26 INMATE HOLDER: Yes.

27 PRESIDING COMMISSIONER HARRIS-RITTER: It's hard

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1 to read his handwriting, who lives in Providence, Rhode
2 Island and is also offering support. So, it appears to me,
3 that you have job offers in three states and one other
4 country. Is that correct?

5 INMATE HOLDER: Yes.

6 ATTORNEY PITMAN: And may I just add one thing?

7 PRESIDING COMMISSIONER HARRIS-RITTER: Certainly.

8 ATTORNEY PITMAN: The letter from Marcellus Sharp,
9 who's that president of Customized Cleaning Services.

10 PRESIDING COMMISSIONER HARRIS-RITTER: Yes.

11 ATTORNEY PITMAN: He had written an earlier letter
12 also offering support. I believe I have a copy of that.

13 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, this
14 is fine.

15 ATTORNEY PITMAN: And then the Board wanted an
16 updated letter.

17 PRESIDING COMMISSIONER HARRIS-RITTER: Right.

18 ATTORNEY PITMAN: So he wrote an updated letter,
19 and said he continues to offer that support.

20 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, thank
21 you. Now, I didn't see, and I want you to point out to me
22 if it's someplace that I just happened to miss it, I
23 thought these job offers -- I didn't see an offer of a
24 residence. Is that in there and I missed it?

25 INMATE HOLDER: For which places?

26 PRESIDING COMMISSIONER HARRIS-RITTER: Any places.

27 ATTORNEY PITMAN: I know --

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1 INMATE HOLDER: All of them.

2 PRESIDING COMMISSIONER HARRIS-RITTER: All of
3 them?

4 INMATE HOLDER: All of them.

5 ATTORNEY PITMAN: I know Brian Tunstall, in his
6 letter, I believe --

7 DEPUTY DISTRICT ATTORNEY SEQUEIRA: Are these
8 questions directed to counsel or to the inmate?

9 ATTORNEY PITMAN: Oh.

10 PRESIDING COMMISSIONER HARRIS-RITTER: They're
11 directed to the inmate, but counsel can help. If it's a
12 problem, I'll take care of it.

13 ATTORNEY PITMAN: In the Tunstall letter, he
14 indicates, "I'm willing to provide him with a place to
15 stay and assist him in finding gainful employment."

16 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

17 ATTORNEY PITMAN: That's a person in Los Angeles.

18 PRESIDING COMMISSIONER HARRIS-RITTER: All right,
19 and Mr. Holder, what is your understanding regarding a
20 place to stay in Trinidad?

21 INMATE HOLDER: I'll be staying with my sister.

22 PRESIDING COMMISSIONER HARRIS-RITTER: Okay. All
23 right, is there anything else that you want to add related
24 to your parole plans that we haven't gone over?

25 INMATE HOLDER: Well, I want to make sure that
26 it's clear that I also will be -- you know, we do have a
27 home in Rhode Island.

1 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

2 INMATE HOLDER: So, you know, of course I can -- I
3 have a place to stay in Rhode Island.

4 PRESIDING COMMISSIONER HARRIS-RITTER: Is that
5 with your father?

6 INMATE HOLDER: No, that's my mom.

7 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

8 INMATE HOLDER: My mom owns a place, my dad owns a
9 place, my brother owns a place, so.

10 PRESIDING COMMISSIONER HARRIS-RITTER: Okay. All
11 right, then we'll move on. I want to note at this time we
12 sent out Penal Code section 3042 notices. They go out to
13 agencies that have a direct interest in your case. As a
14 result of that, we do have a representative from the
15 District Attorney's Office from Los Angeles County. And I
16 have a question, and in fact, maybe Mr. Pitman or Mr.
17 Sequeira will have to answer this for me, but I note in
18 looking through these copies of the notices that went out,
19 one went to the presiding judge, one to the District
20 Attorney's Office, one to the Assistant Attorney General,
21 one to the public defender, and one to the Beverly Hills
22 Police Department. And in looking at the probation
23 officer's report, it looked to me like it was prepared by
24 somebody in the sheriff's office. So, do either of you
25 recall or have a record that would show that the
26 investigating agency on this was the Beverly Hills Police
27 Department?

1 ATTORNEY PITMAN: Yes.

2 DEPUTY DISTRICT ATTORNEY SEQUEIRA: It's reflected
3 in the probation report.

4 PRESIDING COMMISSIONER HARRIS-RITTER: Okay, thank
5 you.

6 ATTORNEY PITMAN: Yeah, the Beverly Hills Police
7 Department in --

8 DEPUTY DISTRICT ATTORNEY SEQUEIRA: First of
9 Detective Decure (phonetic) from the Beverly Hills Police
10 Department.

11 PRESIDING COMMISSIONER HARRIS-RITTER: Okay.

12 ATTORNEY PITMAN: The IOs were Detective Decure
13 and (inaudible).

14 PRESIDING COMMISSIONER HARRIS-RITTER: That's
15 fine. I just wanted to make sure on the record that we
16 were okay with that. All right. Then at this time, Mr.
17 Holder, we move to the part of the hearing where we can
18 ask you questions. I don't have any additional questions
19 for you right now, so I'm going to ask Commissioner Harmon
20 if he has any, but I also just want to let you know before
21 we go to Commissioner Harmon, that after that, then the
22 representative from the District Attorney's office will be
23 able to ask you questions, and he will do this by asking
24 the question -- directing it to the panel. Then you'll
25 hear the question and then you may answer to the Panel,
26 unless there's some clarification needed. If there is,
27 please tell me, and then I will have him clarify. After

1 that, then your attorney will be able to ask you
2 questions. Following that, then we move to the final
3 statements, okay?

4 INMATE HOLDER: Yes.

5 PRESIDING COMMISSIONER HARRIS-RITTER: All right,
6 Commissioner Harmon?

7 DEPUTY COMMISSIONER HARMON: Yeah, this will be a
8 little bit out of sequence here, but I want to ask you the
9 question, why did you do this kidnapping? What were the
10 reasons you (inaudible)?

11 INMATE HOLDER: Well, as I stated before, Mr.
12 Harmon, it was about trying to gain some money to advance
13 my business.

14 DEPUTY COMMISSIONER HARMON: Okay. And I went all
15 the way back to your initial hearing. You said you've
16 been hounded about this 12 Step thing for years, and I
17 went back to the initial hearing in 1997. And what I
18 found in here; Deputy Commissioner Douglas asked you on
19 page 19, because you were in a 12-step program at the
20 time, and he says to you, I'll just take parts of it here.
21 It says,

22 "Well, let me ask you something, how many of
23 the steps do you and how many have you
24 applied to your actual lifestyle? And you
25 said, I know eight of the steps. And
26 Douglas says, you know eight of the steps?
27 Eight of them? Okay, so the fourth one is

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1 to make a fearless and searching inventory,
2 right? It is."

3 And then it goes on. And then of course, you know,
4 there's question as to the 12 steps. And then you and I
5 met back in '03 and we discussed it again. And it's been
6 discussed in the meantime. I'm just going back to me
7 since it was me. And it says here -- I'm trying to cut it
8 down so we don't go into a lot of detail here. I asked
9 you about the steps and at the time, I'm just going to
10 paraphrase here. You said to me -- I said to you, did you
11 ever learn the steps? And you said, some of the steps.
12 And I said to you, you don't know them all? All the years
13 you've been in it and you don't know the steps? I'm on
14 page 35 and 36 and it goes on. And then you go to explain
15 the steps and all, but it was obviously a concern and all
16 that. And we discussed the same things. So, it's not
17 that we're picking on you, it's just that we just can't
18 get an understanding of why you're in the program and yet,
19 you still can't --

20 **INMATE HOLDER:** Look, Mr. Harmon, I told you that
21 I enjoy going to the program. I listen to a lot of the
22 testimonies that the guys gave and I feel that it will
23 help me in a way that, if I met someone someday that is
24 involved in drugs or alcohol, and et cetera, I can share
25 verbally the experiences that I have heard through
26 testimonies from other guys what drugs and alcohol do to
27 them.

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1 DEPUTY COMMISSIONER HARMON: Okay, that's
2 wonderful. That's wonderful. I guess what I'm worried
3 about is another kidnapping.

4 INMATE HOLDER: Oh, Mr. Harmon. (Inaudible).

5 DEPUTY COMMISSIONER HARMON: No, I'm telling you
6 right up front. What you did was one of the most
7 conniving serious crimes that could happen to innocent
8 people in their own home; a place of shelter, a place that
9 should never ever be attacked. And if I have a person
10 that's sitting before me and I believe I'm being -- that
11 person's being deceptive, that's a real concern of mine.
12 And so that's why I'm asking you these questions. Because
13 what I look at when I look through these transcripts, is
14 I'm being snowed. That's what I look at is that there's a
15 lot of verbiage going on, but nothing's happening. I mean
16 everybody knows the words remorse and insight, and all
17 that kind of stuff, but I want to get down to the nitty
18 gritty because the crime that you committed is one of the
19 worst crimes that can happen in my mind to an innocent
20 child and people. So that's why I'm asking you these
21 things. So, I want to ask you; I know you did it for
22 greed. I've read all about the businesses and you and I
23 have met before. What -- are you the -- I know you had a
24 crime partner. Are you the planner of this whole crime?

25 INMATE HOLDER: Yes, Mr. Harmon.

26 DEPUTY COMMISSIONER HARMON: By yourself?

27 INMATE HOLDER: No, Mr. Harmon, not by myself.

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1 But I'm the person that was 100 percent responsible for
2 this crime.

3 DEPUTY COMMISSIONER HARMON: I know you're
4 responsible for the crime. Who thought up the crime? Who
5 was the planner? Who's the one that the idea was
6 triggered from?

7 INMATE HOLDER: Myself. I was the one that the
8 idea was triggered from, Mr. Harmon. And then my other
9 crime partners got involved and we discussed the crime.

10 DEPUTY COMMISSIONER HARMON: So the whole thing
11 was your idea, and you approached them. Is that right?

12 INMATE HOLDER: Yes, Mr. Harmon.

13 DEPUTY COMMISSIONER HARMON: And did you,
14 yourself, ever threaten to kill anybody in that home?

15 INMATE HOLDER: No, Mr. Harmon, I didn't threaten
16 to kill anybody in that home.

17 DEPUTY COMMISSIONER HARMON: Did anybody threaten
18 the victim's with being killed.

19 INMATE HOLDER: Yes.

20 DEPUTY COMMISSIONER HARMON: And who was that?

21 INMATE HOLDER: My crime partner. Is it okay to
22 say his name?

23 DEPUTY COMMISSIONER HARMON: I know your crime
24 partner's name, but you can say it.

25 INMATE HOLDER: I'll answer the question, Steve
26 Rose. But that was just a, you know, scare tactic. I
27 think, Mr. Harmon you know the last time I met you, you

1 dealt with me and it was on different level. It wasn't
2 this hard, but I respect that. And I just want you to
3 know, in my heart that the day that you decide to give a
4 second chance in my life, you will never have to worry
5 about me again.

6 **DEPUTY COMMISSIONER HARMON:** Okay. Well, Mr.
7 Holder, I'm going to tell you right up front. I'm
8 disappointed in you. You know, I usually don't like to
9 come back a second time with anybody I meet, and they
10 haven't done what I've asked.

11 **INMATE HOLDER:** What was it that you asked Mr.
12 Harmon, the last time that we met?

13 **DEPUTY COMMISSIONER HARMON:** I don't think I have
14 to go over that again. This is a serious crime. This is
15 a very serious crime, and I'm looking to see whether or
16 not, you know I'm ready to give you the keys to the door,
17 you know? And it's just my impressions that you leave me
18 with, that's all. I don't have any magic that tells me
19 that your -- are reformed or you're not. I have to go on
20 instinct on a lot of it. A lot of it is subjective, you
21 know? But, I'm disappointed. On the other hand, you're
22 doing a lot of good things too.

23 **INMATE HOLDER:** I'm sorry that you're disappointed
24 in me this time, Mr. Harmon. You didn't sound this way
25 last time I met you. But, you know, I'm trying my best.
26 I'm doing my best, and I think that in 16 years that I've
27 been down in prison, I think I have proven that I can stay

1 out of trouble. I mean, you know, I just want to get
2 another chance to just have a life, have a family. I
3 don't even have a family, you know. So, you know,
4 whenever you decide, you know, I just hope that I'm here
5 to sit in front of you. But I just want you to know that
6 I'm going to do unto others that I'd like others to do
7 unto me. And I understand that this is a serious crime.
8 And I've always come here, and the times that I've sit in
9 front of you, I've always been straightforward with you.
10 But, there's nothing I can do to change what I've done 16
11 years ago, Mr. Harmon. There's nothing I can do. But I
12 can tell you I'm a better person today. I'm a better
13 person today. And I just want to be able to get out and
14 take care of my mom, you know, just whatever I have left.
15 That's all I want to do. I'm not going to be in handcuffs
16 again. I know that for a fact. I know you don't know
17 that because I'm sitting here, because I did something
18 terrible, you know, to my friend. She's no longer here.
19 But I'm telling you, I know I'm not going to be in trouble
20 again, so whenever you're ready to give me that chance, I
21 hope I'll be able to sit here in front of you and you say,
22 Keith, it's your time, you know. There's nothing I can
23 do. I can't change it. I can't change it. I'm very
24 sorry for what I've done, and I think by just showing that
25 I can be a better person because I'm from that
26 environment. I'm not from the environment of drugs,
27 alcohol, guns, killing people, you know, I've done

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1 something wrong. I -- you know it was a bad idea. I take
2 full responsibility for what I've done. Full
3 responsibility. I'm not shifting blame on anybody. I
4 know I've done that. You know, but there's no loss of
5 life to my crime. I understand that. I know I did a
6 terrible crime. It's the same as if I took a life or
7 something, you know, but, you know, 16 years in prison.
8 You know, it's not easy, Mr. Harmon. You know, walking
9 that line is not easy. It's not an easy way to live. And
10 I just want you to know that. In my heart, that I know
11 I'm going to be a better person and I know I will be when
12 I leave this place. You'll never have to worry about
13 (inaudible). You never pick up the newspaper and see my
14 name in it again.

15 DEPUTY COMMISSIONER HARMON: Okay. Okay. I will
16 return to the Chair.

17 PRESIDING COMMISSIONER HARRIS-RITTER: Thank you.
18 Mr. Sequeira, do you have any questions that you'd like to
19 pose to the inmate through the Board?

20 DEPUTY DISTRICT ATTORNEY SEQUEIRA: Yeah, I would
21 like to know why the inmate thinks that sixteen 128s
22 during his last 16 years in prison means he's been
23 performing well.

24 PRESIDING COMMISSIONER HARRIS-RITTER: Answer to
25 the Panel.

26 INMATE HOLDER: I would like you to know that a
27 lot of the 128s that I have for not -- for instance, not

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1 showing skin. I was sleeping. I'm not showing skin. Or
2 out of bounds. It doesn't show that I'm a threat to
3 society because I was sleeping and not showing skin.
4 They're warning 128s, you know? I haven't been in any
5 violent things, no drugs, no assault on staff, no
6 threatening staff, no -- I mean, you know in a lot of the
7 128s, when we come to the Board, it's one side. It's you
8 know, the inmate never gets a chance you know, to really
9 say hey, you know, it's one-sided. You know, the officer
10 has the power to do anything when the -- it's coming to a
11 128. Just write it, send it to his file. It doesn't have
12 to go to like a 115 has to be looked at the sergeant,
13 looks at the lieutenants, before they say it's worthy, you
14 know? So, I mean, you know, the 128s I have, you can see
15 all of them; what they're about. None of them is saying
16 that I've done anything that would make me a bad person in
17 society because he wasn't showing skin or he was out of
18 bounds, walking on the line or something like that, going
19 into the program office when you're not supposed to go
20 into the program office. I was mowing the yard, you know.
21 You know, so, I mean, you know, just having you know, the
22 sixteen 128s that I have on my file; none of them have
23 shown that I'm a threat to society or I'm a threat to
24 myself or to others. You know, I mean, you know, they're
25 128s for warning (inaudible) Mr. Holder. Some officers
26 will pull you over and talk to you, some officers just
27 want to write it because they know, that you know, how it

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1 affects us at the Board.

2 PRESIDING COMMISSIONER HARRIS-RITTER: Okay. Any
3 further questions?

4 DEPUTY DISTRICT ATTORNEY SEQUEIRA: Yeah, just a
5 minute.

6 DEPUTY COMMISSIONER HARMON: While he's looking,
7 but just so you know Counsel, the letter is in the file.
8 I knew it was there earlier.

9 ATTORNEY PITMAN: Which letter?

10 DEPUTY COMMISSIONER HARMON: From the lady that
11 passed away.

12 ATTORNEY PITMAN: Oh, okay.

13 DEPUTY COMMISSIONER HARMON: Okay.

14 ATTORNEY PITMAN: Good. I don't know if the one
15 from Mr. Dion is in the file either, but that was the
16 special ed teacher at his school. If not, I have a copy
17 in my file, my original file that a --

18 DEPUTY DISTRICT ATTORNEY SEQUEIRA: I have no
19 further questions.

20 PRESIDING COMMISSIONER HARRIS-RITTER: Thank you.
21 Mr. Pitman, do have any questions you'd like to pose to
22 your client?

23 ATTORNEY PITMAN: I don't have any questions that
24 I need to pose to him.

25 PRESIDING COMMISSIONER HARRIS-RITTER: All right,
26 then we'll move to final statements. We'll start with the
27 representative from the Los Angeles County District

1 Attorney's office.

2 DEPUTY DISTRICT ATTORNEY SEQUEIRA: Thank you.

3 I'd ask the panel to find the inmate unsuitable for parole
4 at this time for the following reasons. First of all, the
5 commitment itself -- offense itself involved an extreme
6 amount of planning and premeditation. It was a crime that
7 involved multiple victims. The poor housekeeper was
8 absolutely terrified, the victim's mother, what is -- in
9 panic over the disappearance of her baby, and of course
10 the father of the baby was also understandably shook up by
11 this whole incident. The inmate planned this crime out of
12 greed. He needed the money. He also claims that there's
13 this romantic relationship with the victim's mother, and
14 frankly in everything that I've seen with respect to the
15 inmate's various statements about the deceased victim in
16 this case, it seems to me today that he's finally
17 admitting that she was, in fact, a victim, where in the
18 past, he's tried to indicate that she was a co-
19 conspirator, that she was involved in the kidnapping of
20 her own baby. Now, that's the kind of pattern with this
21 inmate before I (inaudible) times, kind of shift the blame
22 on her and I can tell you through the original police
23 reports how he manipulated her; how, when his story
24 started going south, when the baby was turned in by one of
25 his crime partner's friends in Compton, how he accompanied
26 her down to the police station, got her to try and change
27 her story around to help his means, you know, he was

1 clearly manipulating her. And the reason I say he was
2 manipulating her and continue to manipulate is you look at,
3 the probation report and you look at this contact person
4 who was arrested, and that's this woman named Hiroko
5 Hitachi who's now his fiancé, or has been his fiancé for
6 the 17 or 18 years. So, he has this great relationship
7 with the victim's mother or the victim in the case since
8 she'd also be considered the victim. What's the
9 relationship with this other woman? Well, obviously if we
10 would believe that he's manipulating the victim's mother
11 during this whole crime to begin with, which makes it even
12 more serious. Not only does he victimize this poor woman
13 and (inaudible) and the child, and the husband and the
14 father of the child, but he continues to torment her and
15 that's even evidenced in the letters that she's writing to
16 try to help him later on, because she feels sorry for him,
17 because she feels bad that he got involved in it. It's
18 probably hard for her to believe that he would try to
19 extort money from her husband in the amount of \$400,000.
20 This manipulative nature also shows itself once he comes
21 to prison. What does he say about his 128s? At the last
22 hearing he says, well, the officers just write you up for
23 anything. He doesn't seem to be willing to follow the
24 rules in prison. I mean there are specific rules, and
25 maybe he could argue that maybe one of these 128s is a
26 little unfair, but there are 16 of them. And he doesn't
27 seem to think that he's guilty of any of those 16. If he

1 can't follow the rules within the institution, how can he
2 be expected to follow the rules outside in society? And
3 you know he's been to Panels numerous times before. They
4 discussed issues about the 128s with him at the last
5 Panel. He was also asked why he didn't have a work
6 assignment at the last Panel and part of it was attributed
7 to the transfer of prisons, but again, he's not working
8 here. He seems to program only if he thinks it will help
9 him in some way. It's just like the whole 12 steps. He
10 doesn't really know the steps, he's just going through the
11 motions because he feels he has to. And he doesn't -- and
12 I don't see any true understanding of the steps. I mean,
13 he talks about the steps as if it's something he has to
14 learn to help somebody else, not as if the steps were
15 designed in some way to help him in terms of his own self-
16 awareness and self-help. Because I don't think that he,
17 still to this day, thinks he's really done much wrong. I
18 mean, it's all in the name of love according to him or
19 then, or for his failing business. You know, I think he's
20 a master manipulator. I think that this is a pattern with
21 him, and I think he poses an unreasonable risk to society
22 due to his 128s and the seriousness of the offense, his
23 lack of adequate self-help programming, and he certainly
24 could do much more in those areas. And for those reasons,
25 I'd ask the Panel find him unsuitable for parole and to
26 make it a two-year denial. Thank you.

27 PRESIDING COMMISSIONER HARRIS-RITTER: Thank you.

1 Mr. Pitman?

2 ATTORNEY PITMAN: Thank you. May I just -- there
3 is a question I'd like to ask.

4 PRESIDING COMMISSIONER HARRIS-RITTER: Certainly,
5 go right ahead.

6 ATTORNEY PITMAN: That I neglected to. Mr.
7 Holder, with respect to the self-help programs that are
8 available here, can you tell us what they are?

9 INMATE HOLDER: The self-help programs?

10 ATTORNEY PITMAN: That are available to you.

11 INMATE HOLDER: Yes. NA, AA, the Life Skills, the
12 One-on-One Groups that you know, I have some chronos in
13 when I see Dr. (inaudible). You know the ones that I have
14 done, the Cage Your Rage, all of -- these are all the
15 self-helps that they had.

16 ATTORNEY PITMAN: Okay.

17 INMATE HOLDER: And I have done all the self-helps
18 that you know, was available to me.

19 ATTORNEY PITMAN: Okay. And I'm ready to make my
20 closing.

21 PRESIDING COMMISSIONER HARRIS-RITTER: Go right
22 ahead.

23 ATTORNEY PITMAN: First of all, I would indicate
24 that my position is that Mr. Holder is a suitable
25 candidate for parole at this time. We believe, based on
26 his background, based on his institutional adjustment, and
27 based on all the facts and circumstances surrounding both

1 the incident and his incarceration, that he would not pose
2 an unreasonable risk of danger to society or be a threat
3 to the public safety. I would begin by indicating he's a
4 high school graduate from Central High School in
5 Providence, Rhode Island. He has no juvenile record or
6 history of criminal behavior of any kind. He -- other
7 than the commitment offense, he has a minimal adult record
8 consisting of one misdemeanor to which he pled no contest
9 to in Glendale. Apart from the incident case and I think
10 this is somewhat debatable, but apart from that, he has no
11 record whatsoever of any kind of violent behavior, no
12 record of assaultive behavior of any kind. He's been in a
13 pretty tough environment for the last 16 years in the
14 California Department of Corrections. He's been through
15 some pretty hard prisons; has no 115s, no record of any
16 kind involving dangerous, violent, assaultive behavior,
17 with respect to other inmates or staff. He has a stable
18 social history with respect to his relationships both in
19 the institution and outside. He has maintained extensive
20 relationships, both with family and with friends, and
21 people he's known since he was in Rhode Island. He also
22 has a stable work history while he's been in the
23 Department of Corrections. I would take offense also to
24 Mr. Sequeira's comments about Mr. Holder's work situation.
25 He's on a list and would like nothing more than to be able
26 to have a job here and to work, but unfortunately, he's on
27 a waiting list. He was moved from the north facility here

1 to the -- he was downgraded, I suppose, to the Level II
2 yards and there just are no job assignments for him.
3 Throughout his time in prison he has really attempted to
4 involve himself in vocational skills including Janitorial,
5 for which he received several commendations and you know,
6 has really worked hard. He also did the Mill and Cabinet
7 Program. He worked as a Porter, and whenever there's been
8 work for him to do, he's done it. He volunteers here. He
9 has a section of the yard that he keeps clean. Everyday
10 he dumps the trash, he cleans it, picks up papers, but
11 unfortunately there's no official job assignment for him.
12 But while in prison, he is certainly, I believe, enhanced
13 his ability to function as a law abiding citizen in
14 society. Number one, he has participated extensively
15 throughout his 16 years in self-help programs, educational
16 programs, therapy, and vocational. And I left out that he
17 also was certified as a Propane Technician. I think he's
18 shown real maturation and growth while inside, and I
19 believe that has reduced his likelihood of recidivism.
20 You know, he came out to Los Angeles; it was the first
21 time he was away from his family. He was running around,
22 he was on the streets, he was you know, hanging around
23 with all you know, different kinds of people at that time.
24 And I think he's really learned you know, I think he's
25 matured and grown and realizes what's important in life
26 and what's important to him, and I think he's expressed
27 very clearly that he you know, would not be back in this

1 situation, and frankly, I believe him. I think he's
2 speaking from his heart and I think he's telling the
3 truth. I think his remorse is truly genuine. I think he
4 is not only remorseful that you know, he did this crime
5 and got in this situation and destroyed a large portion of
6 his own life and his family's life, but I think he really
7 feels true remorse for the victims of this offense and the
8 people that he has hurt, and did hurt, through this
9 offense. And I'll just talk a little bit here about the
10 12-step programs. Keith has never drank really in his
11 life, never took any kind of illegal drugs of any kind.
12 And with respect to his abilities, I don't know about the
13 testing, I wasn't there when he took these tests. I don't
14 know who administered the tests at these different times,
15 so I can't really speak to the difference in the scores,
16 but I know you know, he has wanted and tried to avail
17 himself of every possible self-help program, and
18 unfortunately there aren't a whole lot of them. There are
19 AA and NA, and I recognize that those are wonderful
20 programs and really help a lot of people. I think Keith
21 goes to those programs and takes from it what he can. I
22 don't think he's got the kind of mind that can memorize
23 steps and is analytical in a certain sense. I think he's
24 articulate, I think he's bright, but I think it's
25 difficult for him to just sit there and memorize all the
26 steps, and I mean, if that I think would make the
27 difference that he could come in and memorize all those

1 steps, and I don't mean to be facetious in any way, you
2 know, I think he'd start working on it today because, you
3 know, I think he is sincere, and I don't think he's trying
4 to be deceptive at all. I think what he takes out of the
5 NA and AA programs is that he's learned that it's
6 important for him to make amends to the people that he has
7 hurt. And he's tried to do that. He writes letters
8 constantly to his family, to other people, and I think
9 that he sees that as what's important to make amends, to
10 take a moral inventory of himself. I don't know all the
11 steps quite frankly, but I think that he takes what he can
12 and I think he was trying to express that you know, he
13 listens to the stories, and I'm sure the inmates in here
14 have you know just, you know, incredible stories of their
15 problems and how drugs and alcohol destroyed many lives
16 and their lives and their family's lives, and I think that
17 he feels that that's something that he can take with him
18 and maybe pass it on to others; at least that aspect of
19 it. But I think he has grown through his participation in
20 those programs. And I think also, with respect to the
21 anger management, with respect to the therapy that he has
22 had while in here, I think that he's really grown
23 enormously in that respect as well. With respect to his
24 disciplinary situation while in prison; I would again
25 reiterate that he has had no 115s, which, of course, are
26 serious disciplinary violations. So in the entire time
27 he's been here, he has had no 115s. With respect to the

1 128s, I know that those are not adjudicated types of
2 write-ups or anything. There's no hearing, you're not
3 entitled to be heard, you're not entitled to have a
4 hearing where someone here, an impartial officer or
5 somebody or adjudicator hears evidence and makes some kind
6 of decision as to whether the 128 is well-founded or not,
7 or whether it's true. But he has had these 128s and they
8 are considered to be minor write-ups. I would -- and he's
9 not proud of them, and he shouldn't have them, and you
10 know they are for things; for not showing skin while
11 you're sleeping or you know, he's in a new place and he
12 walks into an office or something, and not to minimize it,
13 but I think the important point that I want to make is,
14 since 1999, he has not had a 128 or negative chrono of any
15 kind and that's going on -- that's over seven years that
16 he, not only has never had a 115, but has not had any
17 128s. And I think that's significant, and I think it
18 shows growth and an ability to figure out you know, what
19 he needs to do to really adjust and to not upset anybody
20 within the system, and I think he's done that. With
21 respect to his parole plans, I think his plans are
22 realistic. I think there is a real chance that he will be
23 deported. If that's the case, he would be sent back to
24 Trinidad. He has his sister there. There's also another
25 letter from a person in Trinidad who would assist him.
26 His sister owns a business. I have spoken to his sister.
27 She is ready to put him to work and to give him a place to

1 live and she, along with the rest of the family, is
2 hopeful that someday he can be out and with his family.
3 His plans in Los Angeles; he has employment prospects as
4 well as in Rhode Island, and those are real and viable,
5 and I think that his plans are realistic, and he does have
6 a family support and other support. With respect to --
7 I've already talked about his institutional behavior. I
8 would just indicate the psychiatric reports and the
9 reports by the psychologists have all been consistent.
10 They've all been very favorable. There was a report from
11 1999 where the doctor indicated that in his position or in
12 his opinion, (cough) excuse me, if Mr., Holder were to be
13 paroled, he would "be likely to succeed in excellent
14 style". He has a very low potential for violence, both in
15 the institution as well as in society. And I think that's
16 something that's extremely important that the Board should
17 consider. He's now served 185 months in prison for this
18 crime, which is an extremely long period of time. And I
19 would just indicate with respect to the commitment
20 offense, there were no physical injuries of any kind
21 contrary to what Sequeira said. The father of this child
22 never was even aware of the kidnapping, was never in
23 court, never had anything really to do with it on any
24 level. The plan was not to injure anybody or hurt
25 anybody, and nobody again, was physically injured. Not to
26 say that there wasn't psychic damage and not to say that
27 it wasn't an extremely serious offense, and we don't want

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1 to downplay it. I would further indicate that the
2 counselors and the staff in the Department of Corrections
3 have indicated that they view him favorably, both through
4 the chronos that we've presented as well as different
5 letters that have been written. I believe he's a low
6 risk. I think that's consistent with the staff here who
7 are you know, have expertise in that as well as the
8 forensic psychologists and psychiatrists. He has a
9 laudatory chrono in his file for saving someone's life
10 here. And I would just close by saying you know, that I
11 think Mr. Holder had worked you know, really hard. He's
12 cleared up the problem of the 128s and hasn't had any in
13 over seven years. At the last Board Hearing, he was asked
14 to continue with self-help, which he has done with these
15 two programs that we've submitted; the Life Skills and the
16 Cage Your Rage and the Family Effectiveness Training
17 programs. And he was also asked to submit updated
18 letters, which he has done. Those were the two basic
19 suggestions that were made to him at the last hearing.
20 And just on a personal note, I've known Mr. Holder since
21 1990 and it's painful for me to come in here and see him
22 because I think he's a good person and I think he made a
23 terrible mistake. I think he did something incredibly
24 stupid, and I think he knows that, and I think he hurt
25 people. And I've seen him many times over the last 16
26 years, and you know, I'm watching him grow old in here as
27 we're all you know, getting older from the time that I

1 first met him. But I truly believe in my heart that he is
2 someone who, if released, would be an excellent candidate
3 and would not be back. And I would just really implore
4 the Board members to you know, to give him a chance and to
5 find him suitable. And I would submit the matter.

6 PRESIDING COMMISSIONER HARRIS-RITTER: Thank you.
7 Mr. Holder, would you like to make a final statement?

8 INMATE HOLDER: Yes.

9 DEPUTY COMMISSIONER HARMON: Excuse me. Let's take
10 a break here a second and change tapes. You guys don't
11 know if there are any sealed tapes do you?

12 Male: Not unsealed. I can get (inaudible).

13 DEPUTY COMMISSIONER HARMON: I have a tape here, I
14 just don't know if --

15 PRESIDING COMMISSIONER HARRIS-RITTER: I have
16 some.

17 DEPUTY COMMISSIONER HARMON: I don't know where it
18 came from. It sounds like it'll be okay. I think it
19 will be okay. There's nothing on the recording. I can
20 just switch the tape.

21 [Thereupon a new tape was inserted]

22 DEPUTY COMMISSIONER HARMON: Go ahead, sir.

23 PRESIDING COMMISSIONER HARRIS-RITTER: Go ahead.

24 INMATE HOLDER: Thank you. I would just like to
25 say that I'm very sorry for my actions and what I have
26 done. I understand the gravitation of what I've done,
27 and I'm very sorry for what I've done. I'm very sorry to

1 my friend Kiomi who's no longer here, her father, her
2 brother, her mom, little Tony; I don't know how old he
3 now, but I'm very sorry for little Tony and his dad as
4 well, and anybody else who's been affected by this case;
5 taxpayers of California, and especially my parents and my
6 family and my supporters. And I'd just like to say that
7 on the day that you feel that I'm going to be ready to be
8 released, I would just like you to know that I hope I'll
9 be here so I can come in and you'll find me suitable
10 someday. I'd just like you to know that I'm going to be
11 a productive member of society the day that you grant me
12 my second chance in life; that I'm never going to be in
13 trouble again. I know I'm not going to be in trouble
14 again, and I understand it may be a little bit difficult
15 for you to believe me because I'm here and you know, and
16 I did a bad crime. And Mr. Harmon, I'm very sorry that
17 you're disappointed in me, that I you know, you're not
18 pleased with me today, and I'm very sorry. I hope that
19 you know, maybe the next time I come, you'll be pleased,
20 but I'm sure it's not going to be anything different.
21 I'm going to be you know, God's (inaudible) I'm going to
22 be the same person, and hopefully, I'll have the same
23 support if everyone stays with me and you know, and I
24 just want you to know that when you feel that you know,
25 that you're ready to give me a second chance, I hope I
26 won't you know, disappoint you on that day, you know,
27 that I'm very sorry for having you feel that you're

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1 disappointed in me today, and DA, thank you for coming
2 up. And I have to say one thing in closing, that about
3 my 128s, and I want you to know that I took
4 responsibility for my 128s. I didn't take -- if I felt
5 that I didn't take responsibility, I would have probably
6 tried to fight my 128s. I took responsibility for what
7 I've done. It was a mistake, it was warnings, and I just
8 want you to know that I took responsibility for
9 everything that I have done in my life. And I just hope
10 someday, I'll be able to have another chance at freedom,
11 to be with my family and to at least have a family,
12 because I don't even have a family. Thank you.

13 PRESIDING COMMISSIONER HARRIS-RITTER: Thank you.
14 We'll now recess for deliberations. It's 4:25 p.m.

15 A D J O U R N M E N T

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CALIFORNIA BOARD OF PAROLE HEARINGS

D E C I S I O N

DEPUTY COMMISSIONER HARMON: You're on record.

PRESIDING COMMISSIONER HARRIS-RITTER: Thank you.

We are back on the record, and all parties previously noted as present are still present and the time is 5:00 p.m. In the matter of Inmate Keith Holder, the Panel has reached the following decision. Mr. Holder, the Panel reviewed all information received from the public and relied on the following circumstances in concluding that the prisoner is not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison at this time. This is a one-year denial. And I'll go through that with you now. This was a cruel offense. Multiple victims were involved in the same incident. It was carried out in a pretty calculated manner. The offense was carried out in a manner, which demonstrated a callous disregard for human suffering, particularly related to the maid, Ms. Estelilla. The conclusions are drawn from the statement of facts, which was taken from the probation officer's report, pages two to three which I'm incorporating by reference and will just summarize. But basically you contrived a very complicated scheme to use an innocent baby as a pawn to get money from the father of the baby so you could financially support the mother of the child

1 unbeknownst to her. It was just greed as you said
2 yourself. As far as institutional behavior goes, the
3 Panel believes that you have not yet sufficiently
4 participated in beneficial self-help or therapy programs.
5 And we do note the misconduct while incarcerated was
6 sixteen 128A counseling chronos, the last of which was
7 August 25th, 1999 for manipulating staff, which was more
8 than seven years ago. The Hearing Panel notes that
9 responses to Penal Code Section 3042 notices indicate
10 opposition to a finding of parole suitability
11 specifically the District Attorney of Los Angeles County.
12 Other information bearing unsuitability includes other
13 factors of past mental state, past and present attitude
14 towards the crime, signs of remorse, involvement in any
15 other criminal misconduct, which is reliably documented
16 and any other relevant reliable information or
17 circumstances, which taken alone, may not firmly
18 establish unsuitability, but which when taken together
19 contribute to a pattern which results in unsuitability at
20 this time. We really believe you're on the right track,
21 and I really want to emphasize that with you. We really
22 feel that you've made excellent progress, and the Panel
23 believes that you just need to develop some further
24 insight into your behavior related to the life crime and
25 remorse for all the victims including Ms. Estelilla who
26 was terrorized more than anybody else in the whole crime.

1 She's the one who was bound in the living room and the
2 baby was taken from her protective custody. The Panel
3 makes the following findings. The prisoner needs further
4 therapy in order to face, discuss, understand and cope
5 with stress in a non-destructive manner. Until
6 additional progress is made, the prisoner continues to be
7 unpredictable and a threat to others. Nevertheless, the
8 prisoner should be commended for his recent completion of
9 Cage Your Rage and particularly for having no serious
10 disciplinaries the entire time you've been in prison,
11 however, these positive aspects of your behavior don't
12 outweigh the factors of unsuitability at this time. The
13 Panel recommends that you remain disciplinary-free. As
14 indicated above, you -- we really do commend you for
15 that. That's very difficult to do, we understand that.
16 And if available, participate further in self-help and
17 therapy programming. One of the things that you can do
18 if there are not programs that are available to you is
19 you can read books on self-help topics such as looking at
20 insight into what it was that caused you to get involved
21 in this in the first place or dealing with who else were
22 victims related to this crime, that kind of thing. You
23 can read those books and you can do book reports, and you
24 can bring them to the next Board Hearing. That shows the
25 Panel that even if there were not programs available to
26 you, you basically created your own program to show that
27 KEITH HOLDER E-87291 DECISION PAGE 3 10/26/06

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1 you really are working on this and how much you've worked
2 on it. At this time that would conclude the reading of
3 the decision. Commissioner Harmon, do you have anything
4 you'd like to add.

5 **DEPUTY COMMISSIONER HARMON:** I think I've been very
6 clear to Mr. Holder what you know, what my expectations
7 of him would be. He can't put that many years into that
8 particular program and not really gather from it what I
9 think he should be able to. You know, I think you should
10 -- if you're going to come back to the Board, and I'm
11 going to be on that Panel, I'm sure going to expect you
12 to be able to at least tell me those steps that don't
13 apply to drinking and alcohol as you see them, but how
14 the other ones may benefit you. Other than that, I'm
15 wondering if the other programs you've been going
16 through, you have not picked up on what those programs
17 represent either. So, you know, if you're going to come
18 in and represent something, I sure want to know what
19 you've learned from those programs. But other than that,
20 I mean you know, in the big scheme of things, I do
21 believe you're on the right track as the Commissioner
22 said. You've got work to do. I can envision you at some
23 point being released from prison and I encourage you to
24 listen to what I say, you know, in terms of what my
25 expectations are you know, if you were going to come back
26 before me. I was disappointed today. You know, you
27 **KEITH HOLDER E-87291 DECISION PAGE 4 10/26/06**

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1 gave me the same song and dance you gave me a few years
2 ago, and then I pull up the initial hearing and I see you
3 did the same thing then. And I can pull out the other
4 ones too, and I'm sure they're also talking about the
5 same areas, so you know, one thing I don't want to do is
6 mislead you. You're serving a life term and I'm not
7 trying to play God, but I sure want to make sure that
8 when you walk out the door that you're a different person
9 than the person who came in. If that makes any sense to
10 you. My first obligation is to public safety. So
11 therefore, I wish you luck, sir, and that's all I have
12 Commissioner.

13 PRESIDING COMMISSIONER HARRIS-RITTER: Thank
14 you. That concludes the hearing. It's 5:05 p.m. Good
15 luck, Mr. Holder.

16 INMATE HOLDER: Thank you.

17 A D J O U R N M E N T

18 --oOo--

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23 PAROLE DENIED ONE YEAR

24 THIS DECISION WILL BE FINAL ON: FEB 23 2007

25 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT DATE, THE
26 DECISION IS MODIFIED.

27 KEITH HOLDER E-87291 DECISION PAGE 5 10/26/06

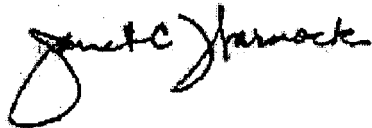
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CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, Janet C. Warnock, a duly designated transcriber, NORTHERN CALIFORNIA COURT REPORTERS, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 76, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of KEITH HOLDER, CDC No. E-87291, on OCTOBER 26, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated January 13, 2007, at Sacramento County, California.



Janet C. Warnock
Transcriber
NORTHERN CALIFORNIA COURT REPORTERS

EXHIBIT "B"

INMATE COPY

**PSYCHOLOGICAL EVALUATION
FOR THE BOARD OF PAROLE HEARINGS
REVISED AUGUST 2006
PAROLE CONSIDERATION HEARING
SEPTEMBER 2006 LIFE TERM INMATE CALENDAR
CORRECTIONAL TRAINING FACILITY-SOLEDAD
August 4, 2006**

This is the sixth psychological evaluation for the Board of Parole Hearings on inmate Keith Holder, CDC# E-87291. This report is the product of a personal interview as well as a review of his central file and unit health record. This interview was a single contact for the sole purpose of preparing this report.

I. IDENTIFYING INFORMATION:

Holder is a 45-year-old, divorced, black male. His stated religious affiliation is Catholic. His date of birth is February 20, 1960. He had no unusual physical characteristics and had a reported alias of Desmond Bolden.

II. DEVELOPMENTAL HISTORY:

Holder denied any history of birth defects or delays of developmental milestones. He denied a history of cruelty to animals or arson. He suffered rheumatic fever as a child, which resulted in damaged heart valves. He currently suffers from cardiac problems as a result. He denied a childhood history of physical or sexual abuse as either a perpetrator or a victim.

III. EDUCATION:

At age ten, Holder moved with his family from Trinidad to Rhode Island. Although he suffered from dyslexic problems, he still graduated from high school. In 1995, he obtained a TABE score of 12.9. His current involvement and interests include writing music and singing. He maintains a strong interest in the business world.

IV. FAMILY HISTORY:

Holder's parents are still living. He has three brothers and sisters. He described his relationship with his family as warm and supportive. He writes home regularly and his parents visit him twice a year. His brothers and sisters visit him approximately eight times a year. He reported no significant criminal or substance abuse history by his other family members.

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

He said he is a heterosexual male. He denied any history of high-risk sexual behavior or sexual aggression.

VI. MARITAL HISTORY:

Holder got divorced in 1992. His ex-wife now lives in Japan. He has a good relationship with his ex-wife. He has no children. He has a fiancée with whom he has had a relationship for 17 years. They met before his incarceration.

VII. MILITARY HISTORY:

Holder never served in the military.

VIII. EMPLOYMENT/INCOME HISTORY:

Holder has operated several businesses, including conducting fashion shows and music productions. From the early 1980s to 1989, he owned a sight seeing business for foreign students. This business also provided a home stay service for these students.

IX. SUBSTANCE AND ABUSE HISTORY:

Due in part to his heart condition, Holder has never abused alcohol or illegal drugs. However, to his credit, he attends AA, to reap whatever benefits he may accrue.

X. PSYCHIATRIC AND MEDICAL HISTORY:

Holder denied any history of psychiatric hospitalizations, suicidal behavior or ideation, serious accidents, head injuries, seizure or other neurological conditions. He has had rheumatic fever and has continued heart problems. He does not take any medication.

XI. PLANS IF GRANTED RELEASE:

If deported, he will live with his sister. If paroled to California, he will get a job as a janitor. His plan is as viable as any other inmate who must get a job after release.

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS:

Holder was oriented to time, place and person, evincing no psychotic symptomatology. He was not depressed and exhibited congruent affect. He was calm and cooperative. His behavior was appropriate. He is estimated to be in the average range of intellectual functioning. He exhibited good insight and remorse, especially as it relates to his crime.

CURRENT DIAGNOSTIC IMPRESSIONS:

AXIS I: None
AXIS II: None
AXIS III: Heart problems
AXIS IV: Incarceration
AXIS V: GAF=85

The prognosis is positive for him to be able to maintain his current mental state in the community upon parole.

XIII. REVIEW OF LIFE CRIME:

Holder took full responsibility for his role in the kidnapping. He exhibited remorse and had good insight into the harm that was caused. His remorse for his crime appears genuine and appropriate.

XIV. ASSESSMENT OF DANGEROUSNESS:

His violence potential is obviously lower than the average inmate, based on his good recent institutional adjustment. If released to the community, his violence potential is estimated to be no higher than the average citizen in the community. It appears his involvement in the instant offense was essentially an aberration for him. There are no obvious or significant violence precursors for him.

XV. CLINICAL OBSERVATIONS/COMMENTS/RECOMMENDATIONS:

He is competent and responsible for his behavior. He has the capacity to abide by institutional standards and has done so for the last several years. He does not have a mental health disorder which would necessitate treatment either during his incarceration or on parole. He is to be commended for his continued participation in AA. Since his last hearing, he says he has completed another self-help group, Anger Management. No treatment recommendations are being made because he does not have a mental health disorder. Parole decisions should be based on custody factors.

W.K. Marek, Ph.D.

W.K. Marek, Ph.D.

Psychologist

Correctional Training Facility-Soledad

PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
(REVISED AUGUST 1998)
PAROLE CONSIDERATION HEARING
MAY 2002 LIFER CALENDAR

CORRECTIONAL TRAINING FACILITY, SOLEDAD
DECEMBER 3, 2002

This is the fifth psychological evaluation for the Board of Prison Terms on inmate Keith Holder, CDC# E-87291, who has been incarcerated for approximately 12 years. This report is the product of a personal interview, conducted on 12/03/02, as well as a review of his Central file and unit health record. This interview was a single contact with this individual for the sole purpose of preparing this report.

NOTE: This report contains information that has not changed since the last Board of Prison Term's report. All information was reviewed, and any necessary updates were made on 12/03/02, the date of this report.

PSYCHOSOCIAL ASSESSMENT

I. IDENTIFYING INFORMATION:

Inmate Holder is a 42-year-old, married, African-American male. His stated religious affiliation is Catholic. His date of birth is 02/20/60. There were no unusual physical characteristics noted. He did have a reported alias of Desmond Bolden.

II. DEVELOPMENTAL HISTORY:

Inmate Holder denied any history of birth defects or delays of developmental milestones. He denied a history of cruelty to animals or arson. The inmate did describe a significant childhood illness, having suffered rheumatic fever as a child, which resulted in damaged heart valves. He currently suffers from cardiac problems as a result of the rheumatic fever. He denied a childhood history of physical or sexual abuse as either a perpetrator or a victim.

HOLDER, KEITH
CDC NUMBER: E-87291
BPT PSYCHOLOGICAL EVALUATION
PAGE TWO

III. EDUCATIONAL HISTORY:

Having immigrated from Trinidad at the age of ten with his family, inmate Holder stated that he completed high school in Providence, Rhode Island, achieving his high school diploma. While he reported having never attended special education, he did report a dyslexic problem. However, this learning disability did not prevent him from obtaining average grades in public school. His latest measured TABE score revealed a grade point level of 12.9, which was done at Folsom State Prison in 1995. His current involvement and interests include writing music, and singing, and he maintains a strong interest in business.

IV. FAMILY HISTORY:

Both of inmate Holder's parents are currently living. His mother is 67 years old, and has developed diabetes, but is still in fair health. His father is 70 years old, and is in good health. Having immigrated from Trinidad, they took up permanent residence in Rhode Island, where they are currently living.

Inmate Holder has three brothers and sisters, all of whom are living. He described his relationship with all of his family as very close, warm and supportive. He said that he writes daily, phones daily, and that his mother and father visit him approximately two times a year. His various brothers and sisters visit approximately eight times a year. He reported no significant criminal or substance abuse history by his other family members.

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

Inmate Holder stated that he is a heterosexual male. He denied any history of high-risk sexual behavior or sexual aggression.

VI. MARITAL HISTORY:

Inmate Holder said that he is currently married, but has been separated from his Japanese wife for 13 years. His wife now lives in Japan. He said that he has maintained a good friendship with his wife, and that

HOLDER, KEITH
CDC NUMBER: E-87291
BPT PSYCHOLOGICAL EVALUATION
PAGE THREE

they phone or write each other 12 times a year. The inmate stated that he has no children. He further described his eight-year relationship with his fiancée, which he described currently as being close and supportive. He stated that they met before his incarceration in CDC.

VII. MILITARY HISTORY:

The inmate denied any history of military service.

VIII. EMPLOYMENT/INCOME HISTORY:

Prior to his commitment offense, inmate Holder had a significant work history. He has operated several businesses, conducting fashion shows and music productions. From 1986 to 1989, he maintained a business involving sightseeing tours in Los Angeles with his wife. He also provided a board and care business for foreign students during this time.

IX. SUBSTANCE ABUSE HISTORY:

Due in part to his heart condition, inmate Holder stated that he has never abused alcohol or other illegal drugs. Moreover, he attended Alcoholics Anonymous from 1995 to 1997, and he has attended Narcotics Anonymous from 1995 to the present. He further stated that he has attended the classes because they are the only offered self-help programs at CTF, although he did state that he attended the Self-Determination Program in 1994.

X. PSYCHIATRIC AND MEDICAL HISTORY:

Inmate Holder denied any history of medical or psychiatric hospitalizations, or any history of suicidal behavior or attempts. He denied a history of serious accidents or head injuries, or a history of seizures or other neurological conditions. However, he did state that he had rheumatic fever, which resulted in a significant medical condition, mainly his cardiac problem. He does not currently take any medication.

HOLDER, KEITH
CDC NUMBER: E-87291
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PAGE FOUR

XI. PLANS IF GRANTED RELEASE:

If granted parole, inmate Holder would live with his friend, Brian Tunstall (who has been approved). Vocationally, inmate Holder plans to begin a sight-seeing tour business in Los Angeles, and also do more music and fashion production. His prognosis for community living is very positive, especially with his family support.

CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS:

Inmate Holder was cooperative and alert. He was appropriately dressed and groomed. His speech was normally articulate and contextually meaningful. His mood and affect were within normal limits. His behavior was appropriate to content. His intellectual functioning was clinically estimated to be within the average to above average range. There was no evidence of a mood or thought disorder. His judgment appeared to be sound. There was no evidence of a mood or thought disorder.

CURRENT DIAGNOSTIC IMPRESSIONS (DSM-IV):

AXIS I: No Contributory Clinical Disorder.
AXIS II: No Contributory Personality Disorder.
AXIS III: Deferred.
AXIS IV: Incarceration.
AXIS V: Global Assessment of Functioning (GAF) = 85.

His prognosis is positive for being able to maintain his current mental state in the community upon parole.

XIII. REVIEW OF LIFE CRIME:

Inmate Holder described the circumstances surrounding his commitment offense. He took full responsibility for his part in the kidnapping. He also demonstrated adequate empathy and awareness for the harm that he caused the victims and those close to his life. He went on, however, to describe potentially mitigating

HOLDER, KEITH
 CDC NUMBER: E-87291
 BPT PSYCHOLOGICAL EVALUATION
 PAGE FIVE

circumstances not included in the record of his trial. That is, he stated that the victim's mother was actually his girlfriend, with whom he plotted to extort money from the kidnapped child's father in Japan. Irregardless of the inmate's current explanation of the crime versus the omission of this version in the court record, inmate Holder still appears to have adequate understanding and empathy for the circumstances leading up to the crime and damage done to the victims. His remorse for his crime appears to be appropriate and genuine.

XIV. ASSESSMENT OF DANGEROUSNESS:

- A. In consideration of several factors, including his lack of a violent criminal history, his relative lack of any criminal history, his lack of violent CDC-115 violations, or any CDC-115 violations, and his greater maturity, this inmate's violence potential within a controlled setting is estimated to be significantly below average relative to this Level II inmate population.
- B. If released to the community, his violence potential is estimated to be no higher than the average citizen in the community.
- C. There are no significant risk factors for this inmate which could be precursors to violence.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS:

- A. This inmate is competent and responsible for his behavior. He has the capacity to abide by institutional standards and has done so during his incarceration period.
- B. This inmate does not have a mental health disorder which would necessitate treatment either during his incarceration period or following parole.
- C. This inmate does not appear to have a drug or alcohol problem, and there are no recommendations in this area.

HOLDER, KEITH
CDC NUMBER: E-87291
BPT PSYCHOLOGICAL EVALUATION
PAGE FIVE

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MEC/gmj

D: 12/03/02
T: 12/05/02

PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
APRIL 1996 CALENDAR
LIFER HEARING
FOLSOM STATE PRISON

INMATE COPY

HOLDER, Keith E-87291

INMATE COPY

This is the 2nd psychological evaluation for the Board of Prison Terms regarding this 36-year old West Indies male now beginning the 6th year of a 7 Years to Life Sentence for the crime of Kidnap For Ransom. This evaluation consisted of a 45-minute clinical interview, administration and interpretation of the MMPI-2 and a review of the Medical File and C-File.

BACKGROUND: Born in Trinidad, Mr. Holder immigrated to the United States when he was ten years old. He attended and graduated high school in Providence, Rhode Island. Although dyslexic and a slow reader he managed to obtain average grades. A victim of Rheumatic Fever, he was under a physician's care until early adulthood. Due to this disease he does not smoke, drink alcohol or caffeine, or use drugs. Nor, he states, has he ever. He married a Japanese National during 1988 and reports he is still married. Regarding the Instant Offense, he appears to be genuinely remorseful and regrets his behavior.

On Mental Status Examination he presents as neatly groomed and oriented to time, place, person, and situation. There are no unusual psychomotor movements. Mood and affect are of appropriate and variable range. There is a pleasant cast to his face--almost a smile--which could be mis-interpreted by others to imply he was not serious when interacting around a topic. There is no evidence of mood disorder, thought disorder, or psychoses. There is no suicidality nor homicidality. Intellectual functioning appears to be at least average. Both judgment and insight are adequate.

**PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
APRIL 1996 CALENDAR
LIFER HEARING
FOLSOM STATE PRISON**

HOLDER, Keith E-87291

DIAGNOSTIC IMPRESSION:

Axis I: V71.09 No diagnosis or condition.
Axis II: V71.09 No diagnosis or condition.
Axis III: Valvular Heart Disease due to Rheumatic Fever, by history.
Axis IV: Psychosocial Stressor is Incarceration.
Axis V: GAF = 88.

CONCLUSIONS: Mr. Holder has acquired a much more positive attitude over the past two-three years. There are no CDC 115's. There is no diagnosable psychopathology. Violence potential within the institutional setting has been much less than average and in a less controlled setting, such as return to the community, violence potential would continue to be much less than average.

RECOMMENDATIONS: There are no psychological recommendations.

Jerre L. Lender, Ph.D.
Jerre L. Lender, Ph.D.-
Supervising Senior Psychologist

**PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
MARCH 1997 CALENDAR
LIFER HEARING
FOLSOM STATE PRISON**

HOLDER, Keith E-87291

This is an update to the Psychological Evaluation, for the Board of Prison Terms, of March 27, 1996. This thirty-seven year old West Indies male is now beginning the seventh year of a Seven Years to Life Sentence for the Crime of Kidnap For Ransom. Mr. Holder was interviewed for forty minutes for today's update and his Unit Health Record and Central File were reviewed.

BACKGROUND: Mr. Holder is the fourth of five children born in Trinidad. He was born with a heart condition and received penicillin medication until twenty years of age. Shortly after birth he spent two years in a convalescent hospital before moving into the family's home. Mother moved to Rhode Island during 1967 and the rest of the family, including Grandmother, followed in 1970. During high school he had begun involvement in fashion productions for department stores and continued this endeavor after high school graduation (1979) until he moved to California in 1983. From 1983 until the time of the Instant Offense he did auto detailing and developed a sight-seeing tour business. Presently he continues to express remorse over the Instant Offense and it appears he has been utilizing his incarceration in a most productive way.

Upon Mental Status Examination I find him to be pleasant and cooperative--well-groomed. He seems calm yet appropriately concerned about the interview. Speech is of normal rate and volume. Mood is normal and affect is appropriate. Thoughts are logical, rational, and coherent with no loosening of associations. There are no auditory or visual hallucinations nor suicidal or homicidal ideation. Fund of knowledge is quite adequate. Judgment is good. Insight is good.

DIAGNOSTIC IMPRESSIONS:

Axis I: V71.09 No diagnosis or condition.

Axis II: No diagnosis or condition.

Axis III: Medical Condition: Valvular Heart Disease due to Rheumatic Fever, by History.

Axis IV: Psychosocial Stressor: Incarceration.

Axis V: Global Assessment of Functioning = 92.

**LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
FEBRUARY 2006 CALENDAR**

HOLDER, KEITH

E87291

I. COMMITMENT FACTORS:

- A. **Life Crime:** Count 2: Kidnap for Ransom, PC 209(A), Los Angeles County Case Number SA003399. Term: 7 years to Life with MEPD of 5/13/97. Received in CDC on 3/1/91. Victim: Katsutoshi Takazato, age: 11 months.

1. **Summary of Crime:** Kiyomi Takazato, a 26 year old Japanese citizen, lived in Beverly Hills with her 11 month old son, Katsutoshi (Tony) Takazato. The father and intended victim in the instant offense was Fuminari Hayashida, a wealthy Japanese business man. He lived in Japan and was Takazato's lover and Tony's father. Hayashida traveled to the United States every two or three months and stayed with them. Holder and his crime partner Rose, conspired to extort \$400,000.00 from Mr. Hayashida. A friend of the co-conspirators, Ronald Coleman, who feared getting involved in the offense informed police.

On May 17, 1990, Kiyomi Takazato spent the day with her friend, Keith Holder who she had known for two years. Kiyomi had left her baby in her home with her live in housekeeper and baby-sitter, Marikit Estalilla. When she returned home with Holder at 12:30 a.m. she found the housekeeper bound and gagged. She had been handcuffed to a pole in the living room.

Estalilla told Kiyomi that a man came into her room about 11:00 p.m., grabbed her by the hand and led her into the living room where he handcuffed, gagged and blindfolded her. She was instructed not to call police, or he would kill everyone in the house. He then took the baby. Holder found a ransom note which read, "I want \$400,000.00. 24 hours. I will call. No cops or you will never see the baby." They decided at that time not to call police. They decided that after the baby was safely returned, they would tell the police the truth.

When Holder and Kiyomi arrived at the Compton Police Department, the police separated them. While questioning both of them, Holder was arrested. At 11:35 p.m. on May 17, 1990, witness Ronald Coleman called the police regarding the kidnapping. He told the police that the kidnapper

Inmate Copy

**COPY TO INMATE ON
Nov. 21, 2005**

LIFE PRISONER EVALUATION REPORT
 PAROLE CONSIDERATION HEARING
 FEBRUARY 2006 CALENDAR

2

was Steve Rose and with the help of the witness, the police stopped Steve Rose at 11:45 p.m. while he was driving a blue BMW. The victim's baby was found in the vehicle.

Source documents considered, Los Angeles County Probation Officer's Report, pages two through fourteen and U.S. Court of Appeal for the Second Appellate District Division Five, pages three through ten.

2. **Prisoner's Version:** At an interview on 10/7/05, Holder stated that the previous version is accurate: Holder contends that the kidnapping was a scheme derived by himself, crime partner, Steve Ross and Kiyomi Takazato to extort \$400,000.00 from the baby's father. Holder states that they had been involved romantically for two to three years. She was well taken care of by the baby's father and this was an attempt to extort a large amount of cash at one time. Holder states that he understands that regardless of Kiyomi's involvement he was guilty of the commitment offense. Holder expressed remorse for all victims involved.

3. **Aggravating/Mitigating Circumstances:**

- a. **Aggravating Factors:**

- Victim was particularly vulnerable.
- Prisoner had opportunity to cease but continued with crime.
- Multiple victims.
- Nature of crime exhibited viciousness, cruelty or callousness.
- Prisoner had a special relationship of confidence and trust with the victim.

- b. **Mitigating Factors:**

- Prisoner has minimal history of criminal behavior.

- B. **Multiple Crime(s):** N/A.

1. **Summary of Crime:** N/A.
 2. **Prisoner's Version:** N/A.

II. **PRECONVICTION FACTORS:**

- A. **Juvenile Record:** The prisoner has no arrests or convictions as a juvenile.

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
FEBRUARY 2006 CALENDAR

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- B. **Adult Convictions and Arrests:** Holder's arrest history is limited to an August 13, 1984, Glendale P.D. arrest and conviction for 487.1 PC Grand Theft Property. In Glendale Municipal Court, case number M840725A on December 12, 1984, convicted of 484F(2) PC Forgery of Name on Credit Card, misdemeanor in which he received two years summary probation.
- C. **Personal Factors:** Holder was born February 20, 1960 to Sheila and Ellis Holder. He came to the United States from Trinidad in 1970 to the state of Rhode Island where his parents continue to reside. Holder indicated that he graduated from Central High School in Providence, Rhode Island, in 1979. He has had Vocational Training as a Jewelry Designer and Fashion Promoter. Holder married Koari Chiba, a Japanese Citizen in 1989. Holder states that she has consequently returned to Japan and has remarried. At the time of the commitment offense, Holder was working as a Tour Bus Owner/Operator taking mainly Japanese Tourists on various tours in the Southern California area. Holder states he has basic understanding of the spoken/Japanese language. Also noted are letters contained in the Miscellaneous Section of the Central File from Kiyomi Takazato indicating her support for the prisoner, it appears that Holder was a productive member of society prior to the commitment offense.

III. **POSTCONVICTION FACTORS:**

- A. **Special Programming/Accommodations:** N/A.
- B. **Custody History:** All documents from the previous hearing remain the same. Since Holder's last Board Report he has been unassigned and is currently on the Support Services Waiting List. Holder was received at CTF on 8/6/97 and has remained at CTF in the general population with Medium A custody. (See Post Conviction Progress Report).
- C. **Therapy and Self-Help Activities:** Since Holder's last BPT Hearing he has participated in Alcoholics and Narcotics Anonymous and Anger Management Groups. (See Post Conviction Progress Report).
- D. **Disciplinary History:** Since Holder's last BPT Hearing he has remained disciplinary free.
- E. **Other:** Holder attended his Subsequent #3 Parole Consideration Hearing on 2/3/05. Parole was denied for 1 year. The Board recommended that Holder remain disciplinary free; and participate in self-help programs.

IV. **FUTURE PLANS:**

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
FEBRUARY 2006 CALENDAR

4

- A. **Residence:** Holder states, if deported to Trinidad he can live with his sister Ann Holder.

If paroled in California, Holder states he can live with his friend, Brian Tunstall. His address is P.O. Box 2553, North Hills, California 91393. His telephone number is (213) 760-1980. Holder states he will provide support letters at the time of his hearing.

- B. **Employment:** Holder states, if deported he will be able to obtain employment in the fashion area through his sister in Trinidad.

If paroled to California, Holder states he will be able to obtain employment in the Janitorial field.

Holder states he will provide support letters at the time of his hearing.

- C. **Assessment:** In review of Holder's parole plans, this counselor does not foresee any problems, however, it is recommended that Holder updates his support letters prior to his hearing.

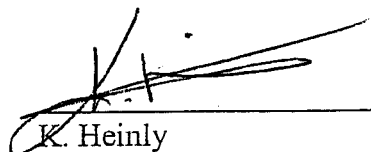
- V. **USINS STATUS:** Wanted by USINS #A30582446.

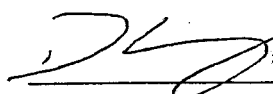
VI. **SUMMARY:**

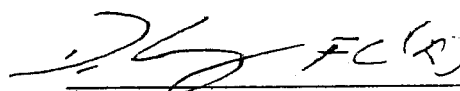
- A. Prior to release the prisoner could benefit from:
1. Continuing to be disciplinary free.
 2. Participation in self-help and therapy program.
- B. This report is based upon an interview with the prisoner on 10/7/05 lasting approximately 1 hour and a complete review of the Central File lasting 2 hours.
- C. Per the Olson Decision, Holder was afforded an opportunity to review his Central File. Holder did not examine his Central File. (Refer to CDC 128B dated 10/7/05 in the General Chrono Section of the Central File).
- D. No accommodation was required per the Armstrong vs. Davis BPH Parole Proceedings Remedial Plan (ARP) for effective communication.

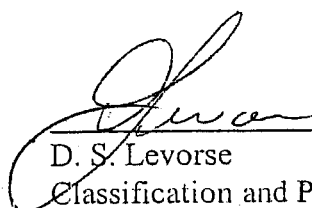
LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
FEBRUARY 2006 CALENDAR

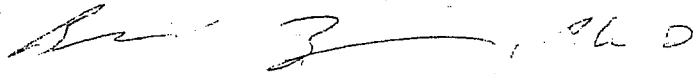
5


K. Heinly
Correctional Counselor I
11-17-05
Date

 CCTP 11-17-05
D. Carnazzo
Correctional Counselor II
Date

 FLC(R) 11-17-05
I. Guerra
Facility Captain
Date

 CAPR 11-18-05
D. S. Levorse
Classification and Parole Representative
Date

A handwritten signature in black ink, appearing to read 'B. Zika', followed by a horizontal line and the letters 'Ph.D.'.

B. Zika, Ph.D.
Senior Psychologist
Correctional Training Facility-Soledad

BGARD OF PRISON TERMS

STATE OF CALIFORNIA

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

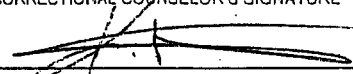
POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
5/3/04 to 10/15/05			<p>PLACEMENT: Remained at CTF in the general population.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None noted this period.</p> <p>ACADEMICS: None noted this period.</p> <p>WORK RECORD: None noted this period. Holder is currently on the Support Services Waiting List.</p> <p>GROUP ACTIVITIES: Holder participated in Alcoholics and Narcotics Anonymous as verified by CDC 128B's dated 6/23/04, 6/30/04, 9/30/04, 12/31/04, 3/31/05 and 6/30/05.</p> <p>PSYCH. TREATMENT: None noted during this period.</p> <p>PRISON BEHAVIOR: Holder remained disciplinary free during this period.</p> <p>OTHER: Holder participated in the "Cage your Rage" Anger Management Group verified by CDC 128-C dated 2/11/05.</p> <p>Holder has completed Dr. Thomas Gordon's Family Effectiveness Training/Harmony in the Home Self Help Anger Management Program verified by CDC 128B dated 4/14/05.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE			DATE
			11-17-05
HOLDER	E87291	CTF-SOLEDAD	FEB/2006

EXHIBIT "C"

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: November 8, 2007

Honorable: STEVEN R. VAN SICKLEN
NONE

Judge B. Perez
Bailiff NONE

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH 004875

In re,

KEITH HOLDER,
Petitioner,

On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: ORDER RE: PETITION FOR WRIT OF HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus filed on September 4, 2007 by the Petitioner. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the determination that the Petitioner presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667.

The Petitioner was received in the Department of Corrections on March 1, 1991 after a conviction for kidnap for ransom. He was sentenced to seven years to life. His minimum parole eligibility date was May 13, 1997.

The record reflects that on May 17, 1990, the Petitioner's accomplice, Steve Rose, entered the home of Kiomi Takazato, bound and gagged her nanny, Mariquette Estelilla, and kidnapped her baby. Mr. Rose threatened to kill Ms. Estelilla if she called police and left a ransom note demanding \$400,000 for the baby's return. The Petitioner was with Ms. Takazato during the kidnapping, but it was later discovered that he planned the offense and enlisted Mr. Rose's help. The baby was discovered, unharmed, in Mr. Rose's car after he was pulled over by police acting on an anonymous tip. The Petitioner stated that he planned the kidnapping to get Ms. Takazato's husband to pay him the money, in order to invest it in his business and become wealthy enough to support Ms. Takazato in a relationship.

The Board found the Petitioner unsuitable for parole after a parole consideration hearing held on October 26, 2006. The Petitioner was denied parole for one year. The Board concluded that the Petitioner was

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: November 8, 2007

Honorable: STEVEN R. VAN SICKLEN
NONE

Judge B. Perez
Bailiff NONE

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH 004875

In re,
KEITH HOLDER,
Petitioner,
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety.

The Board based its decision primarily upon his commitment offense.

The Court finds that there is some evidence to support the Board's findings that multiple victims were attacked during the commitment offense and that the offense was carried out in a dispassionate and calculated manner. Cal. Code Regs., tit. 15, §2402, subds. (c)(1)(A) and (c)(1)(B). Ms. Estelilla was bound and gagged and made to fear for her life during the kidnapping. Additionally, Ms. Takazato's baby was kidnapped from his home. Although no one was harmed during the offense, these victims were certainly traumatized by the kidnapping. The Petitioner admits that he planned the kidnapping for a couple of weeks. He and his accomplice plotted together and committed the offense in a dispassionate and calculated manner.

The Court finds that there is no evidence to support the Board's finding that that commitment offense demonstrated an exceptionally callous disregard for human suffering. Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(D). Although the kidnapping was certainly a very serious offense, it was not more aggravated or more violent than an ordinary kidnapping for ransom. Therefore, it did not demonstrate an exceptionally callous disregard for human suffering. See *In re Scott* (2004) 119 Cal.App.4th 871, 891.

The Board also considered the Petitioner's prior grand theft conviction and the Board's perception that he needs more therapy and self-help in order to gain insight about his offense. While these factors may not justify a finding of unsuitability, the Board may properly consider them as relevant to a determination of whether the Petitioner is suitable for parole. Cal. Code Regs., tit. 15, §2402(b).

The Board also considered the Petitioner's post-conviction gains, including his participation in several anger management and other self-help programs; his two completed vocations; his multitude of job offers in the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: November 8, 2007

Honorable: STEVEN R. VAN SICKLEN
NONE

Judge B. Perez
Bailiff NONE

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH 004875

In re,

KEITH HOLDER,

Petitioner,

On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

United States and Trinidad; as well as his commendable ability to remain free of any serious discipline throughout his incarceration. However, they still concluded that the Petitioner would pose an unreasonable threat to public safety. Penal Code §3041(b). As indicated in *Rosenkrantz, supra*, 29 Cal.4th at 677, it is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence that demonstrates unsuitability for parole, as long as there is some evidence to support the finding of unsuitability. See, *In re Jacobson* (2007) 154 Cal.App.4th 849, 860; and *In re Hyde*, (2007)154 Cal.App.4th 1200, 1213. The nature of the Petitioner's commitment offense constitutes the modicum of evidence required to support the Board's finding of unsuitability. See *Rosenkrantz, supra*, 29 Cal.4th at 677.

Accordingly, the petition is denied.

The court order is signed and filed this date. The clerk is directed to give notice.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Keith Holder
E-87291
California State Prison - Soledad
P.O. Box 689 F-223L
Soledad, California 93960-0689

Department of Justice- State of California
Office of the Attorney General
300 South Spring Street
Los Angeles, California 90013

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		CONFORMED COPY DEC 11 2007 LOS ANGELES SUPERIOR COURT
PLAINTIFF/PETITIONER: KEITH HOLDER		
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		CASE NUMBER: BH004875

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- | | |
|--|--|
| <input type="checkbox"/> Order Extending Time | <input checked="" type="checkbox"/> Order re: Petition for Writ of Habeas Corpus |
| <input type="checkbox"/> Order to Show Cause | <input type="checkbox"/> Order |
| <input type="checkbox"/> Order for Informal Response | <input type="checkbox"/> Order re: |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

December 11, 2007
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: B. Perez, Clerk
B. Perez

✓ Keith Holder
E-87291
California State Prison - Soledad
P.O. Box 689 F-223L
Soledad, California 93960-0689

Department of Justice- State of California
Office of the Attorney General
300 South Spring Street
Los Angeles, California 90013

Keith Holder
CDC:E-87291
Correctional Training Facility
P.O. Box 689 / F-233L
Soledad, CA 93960-0689

Case Number B204941
Division 5

In re KEITH HOLDER on Habeas Corpus.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COURT OF APPEAL - SECOND DISTRICT
FILED
FEB 11 2008

JOSEPH A. LARSEN
J. TELAMER
DEPUTY CLERK

In re

KEITH HOLDER

on

Habeas Corpus.

B204941

(Super. Ct. No. BH004875)

(Steven R. Van Sicklen, Judge)

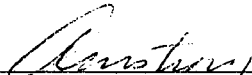
ORDER

THE COURT:

The court has read and considered the petition for writ of habeas corpus filed January 15, 2008. The petition is denied. The record submitted reflects some evidence to support the challenged decision. (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1071, 1080; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 664-665.)



TURNER, P.J.



ARMSTRONG, J.



KRIEGLER, J.

Court of Appeal, Second Appellate District, Div. 2 - No. B192978
S161962

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

DEJUAN HINES, Defendant and Appellant.

The petition for review is denied.

**SUPREME COURT
FILED**

APR 30 2008

Frederick K. Ohlrich Clerk

Deputy

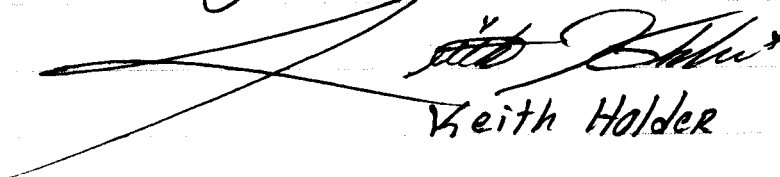
GEORGE
Chief Justice

Dear Court Clerk,

5/19/08

My filing fee was sent to the Correctional trust account office on this date. This notification is to inform you I have signed a trust withdrawal order form for \$5.00 for my filing fee. The court should receive my payment within five to ten working days. Thank you!

Yours truly


Keith Holder

E-filing

PROOF OF SERVICE BY MAIL
(C.C.P. § 1013A, 2015.5)

CV 08
2572116BR
MAY 21 PM 2:01
CW
SUPERIOR COURT
SAN FRANCISCO

I, the undersigned, certify and declare that I am over 18 years of age and I am party to this action, incarcerated at the Correctional Training Facility, Soledad, California and a party to the below entitled case.

On, May 18, 2008, I served a true copy of:

PETITIONER FOR WRIT OF HABEAS CORPUS

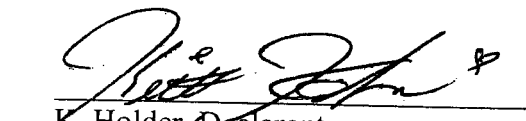
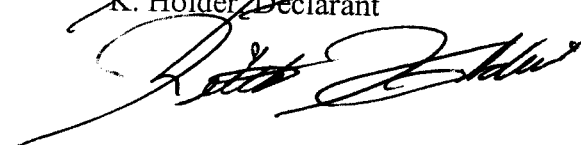
by:

- ☐ Depositing same in the prison mailbox in a sealed envelope, with first class postage attached.
- ☒ Handing same to institutional staff, for processing as Legal Mail per institutional procedures, in a sealed envelope, with an attached Inmate Trust Account Withdrawal form, requesting appropriate postage be attached by the institution's mailroom.
- ☐ Handing same to institution staff, with First Class postage attached, for processing as Legal Mail per institutional procedures. To be deposited in the United States Mail, pursuant to the California Code of Regulations, Title 15, §§ 3142 and 3165.

To be delivered to:

**Office of the Attorney General
455 Golden Gate Ave. Suite 11000
San Francisco, CA 94202**

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

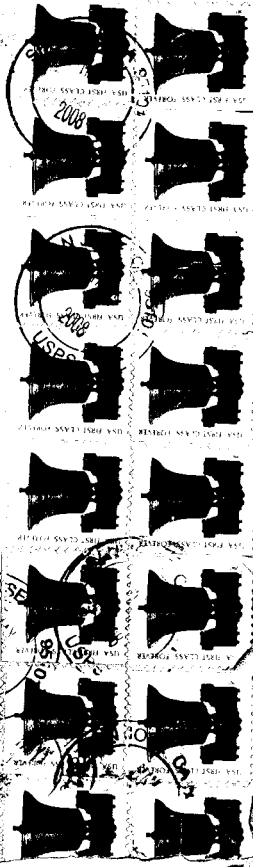

K. Holder, Declarant


KEITH HOLDER, E-87291
Correctional Training Facility
P.O. Box 989, Cell #: FW-233
SOLEDAD, CA 93960-0689

RECEIVED

MAY 20 2008

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA



\$ 00.009

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVE.
San Francisco, CA 94102

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CONFIDENTIAL